

REPUBLIC OF SOUTH AFRICA

---

**PUBLIC ADMINISTRATION  
MANAGEMENT AMENDMENT  
BILL**

---

*(As agreed to by the Portfolio Committee on Public Service and Administration  
(National Assembly))  
(The English text is the official text of the Bill)*

---

**[B 10B—2023]**

ISBN 978-1-4850-xxxx-x

GENERAL EXPLANATORY NOTE:

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Public Administration Management Act, 2014, so as to further provide for the transfer and secondment of employees; to provide clarification regarding the prohibition against employees conducting business with organs of state; to provide for the National School of Government to be constituted as a national department; to provide for the removal of employment disparities across the public administration; to provide for the co-ordination of the mandating process for collective bargaining in the public administration; to amend the Schedule so as to effect certain consequential amendments; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Amendment of section 1 of Act 11 of 2014

1. Section 1 of the Public Administration Management Act, 2014 (Act No. 11 of 2014) (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the insertion after the definition of “family member” of the following definition:

“ ‘head of institution’ means—

(a) in the case of a national or provincial department or government component, the head of department as defined in section 1 of the Public Service Act; or

(b) in the case of a municipality, the municipal manager as defined in section 1 of the Municipal Systems Act;”;
- (b) by the insertion after the definition of “institution” of the following definition: 10
- “ ‘Labour Relations Act’ means the Labour Relations Act, 1995 (Act No. 66 of 1995);”;
- (c) by the insertion after the definition of “Municipal Council” of the following definition: 15
- “ ‘Municipal Systems Act’ means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);”;
- (d) by the insertion after the definition of “national department” of the following definition: 20
- “ ‘national government component’ means a national government component listed in column 1 of Part A of Schedule 3 to the Public Service Act;”;

25

- (e) by the insertion after the definition of “Office” of the following definitions:
- “**organ of state**” means—

(a) a national department, a provincial department, a national government component or a provincial government component;

(b) a public school as contemplated in Chapter 3 of the South African Schools Act, 1996 (Act No. 84 of 1996);

(c) a municipality;

(d) a public entity; or

(e) any institution performing a function in terms of the Constitution or a provincial constitution or performing a public function in terms of any legislation;

“**organised local government**” means an organisation recognised in terms of section 2(1)(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), to represent local government;”;
- (f) by the insertion after the definition of “prescribed” of the following definitions:
- “**provincial department**” means—

(a) the Office of the Premier listed in column 1 of Schedule 1 to the Public Service Act; or

(b) a provincial department listed in column 1 of Schedule 2 to the Public Service Act;

“**provincial government component**” means a provincial government component listed in column 1 of Part B of Schedule 3 to the Public Service Act;”;
- (g) by the substitution for the definition of “public administration” of the following definition:
- “**public administration**” means the public service, municipalities [and their employees,] and for purposes of sections 17A or 17B, includes public entities;”;
- (h) by the insertion after the definition of “public administration” of the following definition:
- “**public entity**” means—

(a) a public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No.1 of 1999); and

(b) a municipal entity as defined in the Municipal Systems Act;”;
- (i) by the substitution for the definition of “public service” of the following definition:
- “**public service**” means all—

(a) national departments;

(b) national government components [listed in Part A of Schedule 3 to the Public Service Act];

(c) provincial departments [which means—

(i) the Office of a Premier listed in Schedule 1 to the Public Service Act; and

(ii) provincial departments listed in Schedule 2 to the Public Service Act]; and

(d) provincial government components [listed in Part B of Schedule 3 to the Public Service Act, and their employees].

Substitution of section 5 of Act 11 of 2014

2. The following section is hereby substituted for section 5 of the principal Act:

“Individual transfers

5. (1) [Any] An employee [of the transferring institution] may, subject to sections 151(3), 153 and 197(4) of the Constitution, be transferred [within an institution or transferred to another institution] between the public service and a municipality or between municipalities in a manner and on such conditions as prescribed.

- (2) An employee may only be transferred—
- (a) **[where]** if reasonable grounds exist;
  - (b) if the employee is suitably qualified, as envisaged in section 20(3) to (5) of the Employment Equity Act, 1998 (Act No. 55 of 1998), for the intended position upon transfer;
  - (c) if the employee requests or consents in writing to the transfer; and
  - (d) **[within that institution by the relevant authority, or to another institution]** with the concurrence of the relevant executive authorities of the transferring and recipient institutions.
- (3) If an employee is transferred **[within an institution, or from one national or provincial institution to another national or provincial institution]** in terms of subsection (1), the—
- (a) transfer does not interrupt the employee’s continuity of employment; and
  - (b) employee may not upon the transfer suffer any reduction in remuneration and conditions of service, unless the employee consents.
- (4) (a) If an employee is transferred **[between a national or provincial institution and a municipal institution or from one provincial or municipal institution to another provincial or municipal institution]** in terms of subsection (1), the remuneration and conditions of service of the employee upon the transfer are as agreed between the executive authorities of the transferring and recipient institutions.
- (b) If an employee is transferred in terms of **[paragraph (a)]** subsection (1) and unless the employee consents, the remuneration and conditions of service may not be less favourable than those on which the employee was employed immediately before the transfer.”

**Amendment of section 6 of Act 11 of 2014**

3. Section 6 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:
- “(c) in the absence of consent, after due consideration of any representations by the employee, if the secondment is operationally justified.”.

**Repeal of section 7 of Act 11 of 2014**

4. Section 7 of the principal Act is hereby repealed.

**Substitution of section 8 of Act 11 of 2014**

5. The following section is hereby substituted for section 8 of the principal Act:

**“Conducting business with [State] organ of state**

8. (1) In this section **[and in section 9,]**—
- (a) ‘**employee**’ includes persons contemplated in section 12A of the Public Service Act and a person performing similar functions in a municipality [.] and
  - (b) ‘**director**’—
    - (i) means a director of a company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008); and
    - (ii) does not apply to an employee appointed *ex officio* as a director of a public entity.
- (2) An employee may not—
- (a) subject to subsection (4), conduct business with **[the State] an organ of state;** or
  - (b) be a director of a **[public or private]** company **[conducting]** incorporated in terms of the Companies Act, 2008 (Act No. 71 of 2008), that conducts business with [the State] an organ of state.
- (3) A contravention of subsection (2)—
- (a) is an offence, and any person found guilty of the offence is liable to a fine or imprisonment for a period not exceeding **[5] five** years or both such fine and imprisonment; and

- (b) **[constitute]** constitutes serious misconduct which may result in the termination of employment by the employer.
- (4) The Minister may prescribe that certain transactions between an employee and an organ of state, which are remunerative but not for profit and which are necessary for the functioning of an organ of state, do not constitute conducting business with an organ of state for the purposes of this section.”. 5

Insertion of section 8A in Act 11 of 2014

6. The following section is hereby inserted after section 8 of the principal Act:

**“Conduct of employee or former employee participating in award of work to service providers 10**

- 8A. (1) In this section—**
- (a) **‘12-month period’** means a period of 12 calendar months following the conclusion of a contract with a service provider; and
  - (b) **‘service provider’** means a person who provides services or goods to an institution against remuneration exceeding a prescribed amount. 15
- (2) An employee who, in respect of the award of a contract to a service provider—
- (a) set criteria for the award;
  - (b) evaluated or adjudicated the award; 20
  - (c) recommended or approved the award; or
  - (d) participated in any activity contemplated in paragraph (a) to (c), may not, within the 12-month period, provide any service to, accept employment with, or accept appointment to a board of, that service provider for payment in money or in kind, or receive any other gratification from that service provider. 25
- (3) A service provider may not—
- (a) within the 12-month period— 30
    - (i) engage an employee, contemplated in subsection (2), to provide any service to the service provider; or
    - (ii) employ the employee or appoint the employee to a board of the service provider, for payment in money or in kind; or
  - (b) grant any other gratification to the employee. 35
- (4) Subsections (2) and (3) apply irrespective of whether the employment of the employee contemplated therein continued or did not continue with the relevant institution during the 12-month period, or part thereof. 35
- (5) The executive authority may, in accordance with the prescribed criteria, approve a period shorter than the 12-month period contemplated in subsection (2) or (3). 40
- (6) Subsections (2) and (3) apply, with the necessary changes, to any extension of a contract with a service provider, if the remuneration for that extension together with the remuneration for the original contract and any other extensions, exceeds the amount prescribed by the Minister in terms of subsection (1). 45
- (7) Any person who contravenes subsection (2) or (3) is guilty of an offence and on conviction liable to a fine not exceeding R1 million. 50
- (8) The Minister responsible for the administration of justice may, from time to time by notice in the *Gazette*, increase the amount referred to in subsection (7).”.

Amendment of section 9 of Act 11 of 2014

7. Section 9 of the principal Act is hereby amended by the addition of the following subsection:

- “(3) For the purposes of this section, **‘employee’** includes a person contemplated in section 12A of the Public Service Act and a person performing similar functions in a municipality.”. 55

Amendment of section 10 of Act 11 of 2014

8. Section 10 of the principal Act is hereby amended by the substitution in sub-section (2) for paragraph (a) of the following paragraph:

- “(a) must make appropriate provision in its budget— 5  
(i) for the compulsory education and training contemplated in section 13(1)(b); and  
(ii) within [the] its available resources [in its budget] for the education and training of its employees; and”.

Substitution of section 11 of Act 11 of 2014

9. The following section is hereby substituted for section 11 of the principal Act: 10

“National School of Government

11. (1) The National School of Government, which exists when this section takes effect continues to exist, is regarded as having been established in terms of this Act and must be constituted as a national department to enhance the quality, extent and impact of human resource capacity in institutions through training in order to achieve the progressive realisation of a capable public administration that is development-oriented. 15  
(2) To give effect to subsection (1) the School—  
(a) must provide education and training programmes or courses or cause education and training programmes or courses to be provided in the public administration; 20  
(b) must, subject to section 10(2)(a), provide the compulsory education and training contemplated in section 13(1)(b);  
(c) may, at the request of any public entity, provide education and training programmes or courses or cause education and training programmes or courses to be provided to that public entity; 25  
(d) may collaborate and, if necessary, enter into agreements with other training institutions, higher education institutions as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997), continuing education and training institutions as contemplated in the Continuing Education and Training Act, 2006 (Act No. 16 of 2006) and private sector training providers to assist in providing education and training; 30  
(e) may conduct assessments, or cause assessments to be conducted, in respect of education and training programmes or courses;  
(f) may, subject to the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), award qualifications or part-qualifications on the successful completion of education and training programmes or cause such qualifications or part-qualifications to be awarded; and 35  
(g) may, issue certificates of attendance, proficiency or other recognition on the successful completion of education and training programmes or courses or cause such certificates to be issued.”. 40

Repeal of section 12 of Act 11 of 2014

10. Section 12 of the principal Act is hereby repealed.

Amendment of section 13 of Act 11 of 2014

11. Section 13 of the principal Act is hereby amended— 45  
(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
“The Minister may [, **after approval by the Cabinet,**] direct that the successful completion of specified education, training, examinations or tests is—”; 50  
(b) by the substitution for subsection (2) of the following subsection:  
“(2) The Minister must consult organised local government and obtain the concurrence of the Minister responsible for local government [**before**

seeking the approval of the Cabinet contemplated in subsection (1)]  
in respect of a directive to be applicable to municipalities.”.

**Amendment of section 16 of Act 11 of 2014**

12. Section 16 of the principal Act is hereby amended by the deletion of sub-  
section (2). 5

**Amendment of section 17 of Act 11 of 2014**

13. Section 17 of the principal Act is hereby amended by the substitution for  
subsection (7) of the following subsection:  
“(7) The Minister must prescribe the powers of the Office **[and its members]**  
including those necessary to achieve the objects referred to in subsection (6).”.

**Insertion of sections 17A and 17B in Act 11 of 2014**

14. The following sections are hereby inserted after section 17 of the principal Act:

**“Removal of disparities in public administration**

**17A.** In order to remove unjustifiable disparities in relation to  
remuneration and conditions of service for employees who do not fall 15  
within the scope of a relevant bargaining council, the Minister may, subject  
to applicable labour legislation and legislation governing the employment  
of employees in the public administration and after consultation with the  
relevant Minister, prescribe—  
(a) norms and standards to establish the upper limits of remuneration and 20  
conditions of service; and  
(b) steps to remove unjustifiable disparities in remuneration and  
conditions of service provided that these steps may not reduce any  
employee’s remuneration.”.

**“Determination of conditions of service with financial implications 25**

**17B.** (1) In this section—  
(a) **‘accounting authority’** in relation to a national or provincial public  
entity, means the accounting authority contemplated in section 49 of  
the Public Finance Management Act, 1999 (Act No. 1 of 1999);  
(b) **‘accounting officer’** in relation to a municipal entity referred to in 30  
paragraph (b) of the definition of ‘public entity’, means the official of  
the entity referred to in section 93 of the Local Government:  
Municipal Finance Management Act, 2003 (Act No. 56 of 2003);  
(c) **‘conditions of service’** includes annual salary adjustments, salary  
scales or levels, performance bonuses, pay incentives, pension 35  
benefits and any other such benefits; and  
(d) **‘executive authority’** in relation to a public entity referred to in  
paragraph (a) of the definition of ‘public entity’, means—  
(i) the Minister who is accountable to Parliament for a national  
public entity or in whose portfolio it falls; or  
(ii) the member of the provincial Executive Council who is 40  
accountable to the provincial legislature for a provincial public  
entity or in whose portfolio it falls.  
(2) There must be a Committee of Ministers consisting of the Minister,  
the Ministers responsible for finance, education, defence, police, correc- 45  
tional services and such other Ministers as the Cabinet may designate, and  
must function the same as a committee of the Cabinet.  
(3) Subject to the Labour Relations Act, the laws governing the  
employment of employees and any collective agreement—  
(a) no executive authority in the public service may enter into a collective 50  
agreement in respect of conditions of service with financial implica-  
tions or determine them for their employees without a mandate from  
the Committee of Ministers;



- (b) no executive authority, municipality , accounting authority or accounting officer in respect of a public entity, may enter into any collective agreement in respect of conditions of service with financial implications or determine them for that public entity’s employees without first consulting with the Minister and the Minister of Finance; or 5
- (c) the Minister responsible for local government and organised local government, in respect of a municipality, may not enter into any collective agreement in respect of conditions of service with financial implications or determine them for municipal employees without first consulting with the Minister and the Minister of Finance. 10
- (4) The Committee of Ministers must establish an inter-governmental forum in terms of section 9(1) of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), including Premiers, Deputy Ministers and any other member that the Committee may determine to consult for purposes of subsection (3). 15
- (5) The Committee of Ministers, in determining the mandate contemplated in subsection (3), and any other employer in the public administration, prior to concluding a collective agreement or determining conditions of service for their employees, must take into account affordability and any other factor prescribed by the Minister in consultation with the Minister of Finance.”. 20

**Amendment of section 18 of Act 11 of 2014**

- 15.** Section 18 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 25
    - “(2) The Minister must make regulations insofar as they apply to municipalities in consultation with the Minister responsible for local government [,] and the Minister responsible for **[Finance and]** finance, after consultation with organised local government.”.
  - (b) by the insertion of the following subsection after subsection (2): 30
    - “(2A) Any regulation made in terms of section 17A may only be made after consultation with the Minister responsible for public entities.”

**Substitution of Schedule to Act 11 of 2014**

**16.** The following Schedule is hereby substituted for the Schedule to the principal Act:



SCHEDULE

LAWS REPEALED OR AMENDED

(Section 19)

No. and year of Act	Short title	Extent of repeal or amendment	5
Proclamation No. 103 of 1994	Public Service Act, 1994	1. The repeal of sections 4 and 15; 2. The substitution for subsection (2A) of the following subsection: “(2A)(a) Subject to the Labour Relations Act and any collective agreement, the determination of any conditions of service for— (i) employees in general or a particular category in terms of this Act; and (ii) educators or members of the services in general or for a particular category in terms of the laws governing their employment, shall be made with the concurrence of [a committee of] the Committee of Ministers referred to in section 17B(2) of the Public Administration Management Act, 2014 (Act No. 11 of 2014). (b) For the purposes of paragraph (a)[— (i)] ‘conditions of service’ [means] include annual salary adjustments, salary scales or levels, performance bonuses, pay incentives, [or] pension benefits and any other benefits of a similar nature [; and (ii) the committee of Ministers shall consist of the Minister, the Minister of Finance and the Ministers responsible for the educators and the members of the services and such other Ministers as the Cabinet may designate (if any), and shall function the same as a committee of the Cabinet].	10 15 20 25 30 35 40 45
Act No. 17 of 1998	Transfer of Staff to Municipalities Act, 1998	The repeal of the whole Act.	50

Short title and commencement

17. This Act is called the Public Administration Management Amendment Act, 2023, and takes effect on a date determined by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE PUBLIC ADMINISTRATION MANAGEMENT AMENDMENT BILL**

### **1. BACKGROUND**

- 1.1 To give effect to the vision of the Single Public Administration, a Public Administration Management Bill was developed in 2008 to provide for the organisation, management, functioning and personnel related matters in the three spheres of government.
- 1.2 The Public Administration Management Bill progressed through the Parliamentary processes from 2008 to 2014 and was eventually promulgated as the Public Administration Management Act, 2014 (Act No. 11 of 2014) (“the principal Act”), and assented to by the President in 2014.
- 1.3 The intention to have one piece of legislation governing the public administration was, however, not realised as the principal Act did not repeal the Public Service Act, 1994, nor did it repeal the Municipal Systems Act, 2000, as initially contemplated.
- 1.4 Currently, only thirteen sections of the principal Act were brought into operation, effective from 1 April 2019, while the remaining seven sections (sections 5, 6, 7, 9, 11, 12 and 19) remain inoperative as they either require regulations for implementation, are difficult to operationalise or require amendment.
- 1.5 Since the promulgation of the principal Act, it has been a challenge to ensure the full implementation thereof as the Act created overlaps of policy areas and responsibilities already provided for in other legislation without providing for the repeal or other mechanism to address the overlaps. Some of the provisions of the principal Act are impossible to implement due to fiscal and other considerations. Implementation of most provisions of the principal Act is reliant on regulations which can only be approved under onerous circumstances requiring the concurrence of the Ministers for the Public Service and Administration, Finance, Cooperative Governance and Traditional Affairs and the South African Local Government
- 1.6 In addition to the aforesaid, new provisions are being introduced to remove and eliminate unfair disparities that exist in remuneration and conditions of service in the public sector, including public entities and to provide for coordinated mandating processes for the determination of remuneration and conditions of service.

### **2. CLAUSE-BY-CLAUSE SUMMARY OF BILL**

#### **2.1. Objects of the Bill**

The main objects of the Bill are to improve service delivery through the alignment of human resource, governance and related arrangements in the three spheres of government; to further provide for the transfer and secondment of employees, to provide clarification regarding the prohibition against employees conducting business with an organ of state; to provide for the constitution of the National School of Government as a national department, to remove unjustifiable disparities across State institutions and to provide for the co-ordination of mandating processes for collective bargaining in the public administration.

#### **2.2. Clause 1**

Clause 1 provides for the insertion of new definitions in section 1 of the principal Act to provide for ease of interpretation. The definitions such as, “head of institution”, “Labour Relations Act”, “Municipal Systems Act” “national government component” “organ of state” “organised local

government” “provincial department” “provincial government component” “public administration” “public entity” and “public service” are dealt with.

2.3. Clause 2

Clause 2 seeks to amend section 5 of the principal Act to further provide for the transfer of employees between the public service and municipalities and between municipalities. Transfers ensure the mobility of employees across the spheres of Government to where human resource deficiencies exist or where operational requirements necessitate. This will enhance good governance and enable the transferability of skills and resources where required.

2.4. Clause 3

Clause 3 seeks to provide that secondments contemplated in section 6 of the principal Act should occur only where it is operationally justified. This ensures that secondments do not result in deficiencies being created which hamper service delivery within institutions.

2.5. Clause 4

Clause 4 proposes the repeal of section 7 of the principal Act as the transfer of employees affected by the transfer of functions across institutions is adequately regulated in terms of the Constitution of the Republic of South Africa, 1996, the Public Service Act, 1994 and the Local Government: Municipal Systems Act, 2000. Further the reference to section 197 of the Labour Relations Act, 1995, in section 7 is not applicable to transfers or assignments of legislation.

2.6. Clause 5

Clause 5 seeks to amend section 8 of the principal Act to—

- (a) clarify the definitions of words or expressions to ensure easier interpretation of the provisions of section 8 such as the references to ‘organ of state’ instead of State and the definition of a director of a company;
- (b) exclude employees appointed *ex-officio* on boards from the scope of the prohibition in terms of section 8; and
- (c) empower the Minister to determine that certain transactions between an organ of state and an employee are not construed as “conducting business with an organ of state” to remove the unintended consequences in the implementation of the Act.

2.7. Clause 6

The amendment in clause 6 seeks to address post-employment restrictions. Provision is made for the imposition of a 12 month ‘cooling off’ period for employees involved in the procurement of services of service providers. It provides for a prohibition from accepting employment or appointment to the board of the service provider, the performance of remunerated work or the receipt of any other gratification. Service providers or employees who contravene this provision are guilty of an offence and on conviction liable to a fine of R1 million.

2.8. Clause 7

The amendment in clause 7 seeks to clarify the current provisions in respect of the definition of “employee” for purposes of the disclosure of financial interests contemplated in section 9 of the principal Act.

2.9. Clause 8

Clause 8 seeks to amend section 10(2)(a) of the principal Act to provide that departments must, within their available budget, provide for compulsory training that is directed by the Minister to address developmental needs of categories of employees.

2.10. Clause 9

Clause 9 seeks to amend section 11 of the principal Act to establish the National School of Government as a national department to provide education and training to employees in all spheres of government, including municipalities and public entities.

2.11. Clause 10

Clause 10 seeks to repeal section 12 of the principal Act as it has become redundant following the proposed amendment to section 11 of the principal Act.

2.12. Clause 11

Clause 11 seeks to amend section 13 of the principal Act to remove the unnecessary burden placed on the Cabinet in relation to the determination of prerequisite and/or mandatory education and training.

2.13. Clause 12

Clause 12 provides for the deletion of section 16(2) of the principal Act. Therefore the process to issue norms and standards in respect of the promotion of values and principles contemplated in section 195 of the Constitution will be in terms of the processes contemplated in section 18 of the principal Act.

2.14. Clause 13

Clause 13 seeks to amend section 17(7) of the principal Act to remove reference to “*and its members*”. Section 17(7) of the principal Act requires the Minister responsible for the Public Service and Administration to prescribe the powers of the Office and its members. The principal Act does not provide for functions of individual members and therefore it is proposed that it is not required or necessary for powers of members to be prescribed.

2.15. Clause 14

Clause 14 provides for the insertion of sections 17A and 17B in the principal Act. Section 17A provides for a process to remove unjustifiable disparities across institutions, including public entities. To this end the Bill provides for the Minister, after consultation with the relevant Minister, and subject to the processing of regulations, to prescribe—

- (a) upper limits of remuneration and conditions of service for certain categories of employees who do not fall within the scope of the relevant bargaining council; and
- (b) steps to remove unjustifiable disparities among employees in the public administration provided that such steps must not reduce the salary of an employee unless provided for in an Act of Parliament or a collective agreement.

Section 17B provides for the coordination of mandating processes for collective bargaining in the public administration, including public entities. The amendment establishes a Committee of Ministers which must, in determining a mandate, take into account affordability and any other factor prescribed by the Minister in consultation with the Minister of Finance.

These provisions aim to create better integration and coordination between the various institutions to remove unjustifiable disparities without eroding existing collective bargaining structures and processes or undermining the prescripts governing employees in the various institutions.

The Bill recognises the role of Premiers, Deputy Ministers and organised local government and creates an inter-governmental forum to ensure that such parties are consulted in these processes.

2.16. Clause 15

Clause 15 seeks to amend section 18(2) of the principal Act to align with the Local Government: Municipal System Act, 2000, regarding the issuing of regulations pertaining to local government after consultation with organised local government. Additionally, a further amendment is proposed to allow for the making of any regulation affecting public entities to be made after consultation with the Minister responsible for public entities.

**3. DEPARTMENTS/BODIES/PERSONS TO BE CONSULTED**

National and provincial departments, local government, organised labour, NEDLAC, organised local government and the public.

**4. FINANCIAL IMPLICATIONS FOR THE STATE**

The Bill will result in no financial implications for public administration institutions.

**5. PARLIAMENTARY PROCESS**

- 5.1 The State Law Advisers and the Department are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution as it is legislation listed in section 76(3) of the Constitution, namely legislation envisaged in sections 195(3) and 197 of the Constitution.
- 5.2 The State Law Advisers are of the opinion that it may be necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(ii) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it pertains to matters referred to in section 154(2) of the Constitution.









REPUBLIC OF SOUTH AFRICA

---

**PUBLIC SERVICE  
AMENDMENT BILL**

---

*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
the Bill and prior notice of its introduction published in Government Gazette No. 48449 of  
21 April 2023)*  
*(The English text is the official text of the Bill)*

---

(MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION)

GENERAL EXPLANATORY NOTE:

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Public Service Act, 1994, to provide for the devolution of administrative powers from executive authorities to heads of department; to augment the role of the Director-General in the Presidency to support the President; to provide for a mechanism to deal with the recovery of overpayments of remuneration and benefits; to clarify the role of the Public Service Commission in respect of grievances; to clarify the role of the President and the Premier in respect of the appointment and career incidents of heads of departments; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act promulgated under Proclamation 103 of 1994, as amended by Proclamation 105 of 11 June 1994, Proclamation R171 of 18 November 1994, section 32(1) of Act 38 of 1994, section 1 of Act 47 of 1997, section 1 of Act 86 of 1998, section 40(1) of Act 65 of 2002 and section 25(1) of Act 52 of 2003, and substituted by section 1 of Act 30 of 2007

1. Section 1 of the Public Service Act, 1994 (hereinafter referred to as the “principal Act”) is hereby amended—

- (a) by the substitution for the definition of “executive authority” of the following definition:

- “**executive authority**”, in relation to—
- (a) the Presidency or a national government component within the President’s portfolio, means the President;

(b) a head of—

(i) a national department or national government component, means the President; and

(ii) the Office of a Premier, provincial department or provincial government component, means the relevant Premier;

(c) a national department or national government component within a Cabinet portfolio, means the Minister responsible for such portfolio;

(d) the Office of a Premier or a provincial government component within a Premier’s portfolio, means the Premier of that province;

(e) a provincial department or a provincial government component within an Executive Council portfolio, means the Member of the Executive Council responsible for such portfolio; and

(f) the Office of the Commission, means the Chairperson of the Commission;”;

- (b) by the substitution for the definition of “head of department” of the following definition:  
“**“head of department”, “head of a department” or “head of the department”** means the **[incumbent of a post mentioned in Column 2 of Schedule 1, 2 or 3 and includes any employee acting in such post]** **head contemplated in section 7(3)(a);**” 5
- (c) by the insertion after the definition of “organ of state” of the following definition:  
“**“political office”,** in relation to a political party or structure thereof, means— 10
  - (a) the position of chairperson, deputy chairperson, secretary, deputy secretary or treasurer of the party nationally or in a province, region or other area in which the party operates; or
  - (b) any position in the party equivalent to a position referred to in paragraph (a), irrespective of the title designated to the position;” 15

**Amendment of section 3 of Act promulgated under Proclamation 103 of 1994, as amended by Proclamation R175 of 2 December 1994, section 3 of Act 47 of 1997 and section 2 of Act 86 of 1998, and substituted by section 3 of Act 30 of 2007**

- 2. Section 3 of the principal Act is hereby amended—**
- (a) by the substitution in subsection (1) for paragraphs (h) and (i) of the following paragraphs: 20
    - “(h) integrity, ethics, conduct and anti-corruption in the public service; **[and]**
    - (i) transformation, reform[,] and innovation[ **and any other matter to improve the effectiveness and efficiency of the public service and its service delivery to the public.]; and**” 25
  - (b) by the addition in subsection (1) after paragraph (i) of the following paragraph:  
“**(j) any other matter to improve the effectiveness and efficiency of the public service and its service delivery to the public.**” 30
  - (c) by the substitution for subsection (7) of the following subsection:  
“**(7) An executive authority—**
    - (a) is accountable for the department in his or her functional area;
    - (b) is responsible for approving the strategic plan of the department, including, but not limited to, the department’s core objectives, based on its legislative mandate;
    - (c) shall ensure that the head of department’s role and responsibilities are aligned to the strategic plan of the department;
    - (d) shall establish clear relationships and facilitate co-operation, co-ordination and communication with the head of department and other employees of the department;
    - (e) shall hold the head of department accountable for the administration of the department; and
    - (f) may exercise other powers and must perform other duties conferred or imposed on the executive authority by this Act.” 35 40 45
  - (d) by the deletion of subsection (8); and
  - (e) by the addition after subsection (8) of the following subsection:  
“**(9) (a) If a head of department refuses or fails to fulfil a power or duty as required in terms of this Act, the executive authority of the relevant department may intervene by taking appropriate steps to ensure the fulfilment of that power or duty—**
    - (i) by issuing a written instruction to the head of department, describing the extent of the refusal or failure and stating any steps required to fulfil that power or duty; and
    - (ii) in the event that the head of department fails to take such steps, the executive authority must report such failure to the President or the Premier, as the case may be.” 50 55

**Amendment of section 5 of Act promulgated under Proclamation 103 of 1994, as amended by Proclamation 105 of 1994, substituted by section 3 of Act 47 of 1997, and amended by section 7 of Act 30 of 2007**

3. Section 5 of the principal Act is hereby amended by the addition after subsection (8) of the following subsection:

“(9) (a) The relevant executive authority or head of department may, subject to paragraphs (b) and (c), perform any act in connection with any matter which relates to or arises from the employment or the conditions of service of a person formerly employed in the public service whilst he or she was so employed in the department concerned.

(b) An executive authority or a head of department may only so perform an act if he or she would, at the relevant time, have been competent in terms of this Act or any other law to perform any such act in respect of a serving employee.

(c) No such act shall be to the detriment of the person formerly employed in the public service, and the relevant executive authority or head of department shall not perform any such act in respect of any such person after the expiry of a period of three years after he or she ceased to be so employed.

(d) On request of the relevant executive authority or head of department and on good cause shown, the Minister may, in respect of a particular person, extend the period of three years with such period as the Minister considers appropriate.”.

**Amendment of section 7 of Act promulgated under Proclamation 103 of 1994, as substituted by section 4 of Act 47 of 1997, and amended by section 4 of Act 86 of 1998 and section 9 of Act 30 of 2007**

4. Section 7 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) (a) Each department shall have a head who shall be the incumbent of the post on the establishment bearing the designation mentioned in Column 2 of Schedule 1, 2 or 3, opposite the name of the relevant department.

(b) A head of department—

(i) shall facilitate co-operation, co-ordination and communication with all other relevant departments;

(ii) shall ensure that he or she performs all duties conferred or imposed on him or her by this Act and other applicable legislation;

(iii) shall assist the executive authority to fulfil the executive authority’s accountability and responsibility obligations as contemplated in section 92 of the Constitution;

(iv) shall report to the executive authority, upon request or as may be necessary, on matters regarding the department or any other matter determined by the executive authority;

(v) shall implement the strategic plan of the department;

(vi) shall manage the department’s administration efficiently and effectively in accordance with this Act and other applicable legislation by—

(aa) creating appropriate management structures and assigning clear responsibilities to such structures;

(bb) ensuring efficient decision-making within the department and co-ordination of functions between different units;

(cc) managing, effectively utilising and training employees;

(dd) maintaining discipline of employees; and

(ee) managing sound labour relations;

(vii) may, in accordance with this Act, exercise the powers and must perform the duties that are necessary for—

(aa) the internal organisation of the department, including the establishment and the transfer of functions within the department;

(bb) human resource management; and

(cc) the recruitment, appointment, performance management, transfer, dismissal, remuneration and other career incidents of employees of that department, including any other matter which relates to such employees in their individual capacities.

(c) The head of the Presidency shall, in addition to any power or duty entrusted or assigned to him or her by or under this Act or any other law—

- (i) be the Secretary to the Cabinet;
- (ii) co-ordinate, convene and chair the Forum of South African Directors-General comprising all heads of departments listed in Column 2 of Schedule 1;
- (iii) subject to sections 85(2)(c) and 125(2)(e) of the Constitution, be responsible for intergovernmental relations on an administrative level between the Presidency and national departments, provincial departments and government components, including the co-ordination of their actions and legislation; 5
- (iv) support the President on any matter entrusted or assigned to the President by or under this Act or any other law; and 10
- (v) perform any other function, if so requested by the President, subject to the Constitution or any other law.
- (d) In addition to any power or duty entrusted or assigned by or under this Act or any other law to the head of the Office of a Premier, the head of department shall— 15
  - (i) be the Secretary to the Executive Council of the province concerned;
  - (ii) subject to sections 85(2)(c) and 125(2)(e) of the Constitution, be responsible for intergovernmental relations on an administrative level between the relevant province and other provinces, as well as national departments and national government components, and for the intra-governmental co-operation between the relevant Office of the Premier and the various provincial departments and provincial government components, including the co-ordination of their actions and legislation; and 20
  - (iii) subject to paragraph (e), be responsible for the giving of strategic direction on any matter referred to in section 3A. 25
- (e) The head of the Presidency or the head of the Office of a Premier shall exercise no power or perform no duty which is entrusted or assigned by or under this Act or any other law to any other head of the department.”.

**Amendment of section 9 of Act promulgated under Proclamation 103 of 1994, as substituted by section 6 of Act 47 of 1997 and section 14 of Act 30 of 2007** 30

5. Section 9 of the principal Act is hereby substituted for the following section:

**“Appointments in public service**

**9. [An executive authority] A head of department** may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed.”. 35

**Amendment of section 13 of Act promulgated under Proclamation 103 of 1994, as substituted by section 10 of Act 47 of 1997, amended by section 7 of Act 86 of 1998, and substituted by section 19 of Act 30 of 2007**

6. Section 13 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 40
 

“(1) If so required by regulation, **[an executive authority]** a head of department shall appoint an employee on probation for such period as may be prescribed for the relevant category of employees.”;
  - (b) by the substitution for subsection (2) of the following subsection: 45
 

“(2) After the completion of a probationary period contemplated in subsection (1), **[an executive authority]** a head of department shall confirm the probationary appointment if the employee concerned has—

    - (a) performed at least satisfactorily during the period; and
    - (b) complied with all the conditions to which his or her appointment was subject.”; and 50
  - (c) by the substitution for subsection (3) of the following subsection:
 

“(3) If the probationary appointment is not confirmed in terms of subsection (2), the **[executive authority]** head of department may extend the period of probation or dismiss the employee in accordance with the Labour Relations Act.”. 55

**Amendment of section 14 of Act promulgated under Proclamation 103 of 1994, as amended by section 11 of Act 47 of 1997 and section 8 of Act 86 of 1998, and substituted by section 20 of Act 30 of 2007**

7. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 5

- “(1) Subject to subsections (2), (3) and (4), any employee of a department may be transferred—
- (a) within the department, by its **[executive authority]** head of department; or
  - (b) to another department by the **[executive authorities]** heads of department of the two relevant departments.”. 10

**Substitution of section 14A of Act promulgated under Proclamation 103 of 1994, as inserted by section 21 of Act 30 of 2007**

8. The principal Act is hereby amended by the substitution for section 14A of the following section:

**“Change in employment capacity 15**

**14A.** (1) An employee of a department who is appointed in terms of section 9 in another capacity in the same or another department, or transferred in terms of section 12(3) or 14, shall be deemed to continue employment in the public service without any break in service.

(2) Any person who was employed by an organ of state immediately before he or she is appointed in terms of section 9 shall be deemed to be transferred to the public service in respect of such conditions of service and to such extent as the Minister may determine in terms of section 3(5).”. 20

**Amendment of section 16 of Act promulgated under Proclamation 103 of 1994, as amended by section 3 of Act 13 of 1996, section 13 of Act 47 of 1997 and section 53 of Act 11 of 2013 25**

9. Section 16 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) (a) Subject to the provisions of this section, an **[officer]** employee, other than a member of the services or an educator or a member of the State Security Agency, shall have the right to retire from the public service, and shall be so retired, on the date when he or she attains the age of 65 years: Provided that a person who is an employee on the day immediately before the commencement of the Public Service Amendment Act, 1996, has the right to retire on reaching the retirement age or prescribed retirement date provided for in any other law applicable to him or her on that day. 30 35

(b) If such an **[officer]** employee attains the said age after the first day of a month, he or she shall be deemed to have attained it on the first day of the following month.”; 40

(b) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs:

“(b) An **[officer]** employee who has the right to an earlier retirement age in terms of paragraph (a), and who wishes to be so retired, shall give written notification to his or her head of department of his or her wish to be so retired, and he or she shall— 45

(i) if that notification is given at least three calendar months prior to the date on which he or she attains the retirement age applicable to him or her in terms of paragraph (a), be so retired on the date on which he or she attains that age or, if he or she attains it after the first day of a month, on the first day of the following month; or 50

(ii) if that notification is not given at least three calendar months prior to the date on which he or she attains the said age, be so retired on the first day of such month as the **[executive authority]** head of department may approve, which day may not be before the date 55



on which he or she attains the said age and not be later than the first day of the fourth month after the month in which the notification is received.

(c) (i) In the case of an **[officer]** employee who occupies the **[office]** post of head of department, he or she shall give notification, to the relevant executive authority, of his or her wish to be retired from the public service at least six calendar months prior to the date on which he or she attains the said age, and if he or she has so given notification, the provisions of paragraph (b)(i) apply *mutatis mutandis*. 5

(ii) If such an **[officer]** employee has not so given notification at least six calendar months prior to the date on which he or she attains the said age, he or she shall be so retired on the first day of the seventh month following the month in which that notification is received.”; 10

(c) by the substitution in subsection (2A) for paragraph (a) of the following paragraph: 15

“(a) Notwithstanding the provisions of subsections (1) and (2)(a), an **[officer]** employee, other than a member of the services or an educator or a member of the State Security Agency, shall have the right to retire from the public service on the date on which he or she attains the age of 55 years, or on any date after that date.”; 20

(d) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 25

“(a) Subject to this section and the terms and conditions of a contract contemplated in section 12(2), **[an officer who occupies the office of]** a head of department has the right to retire from the public service and he or she shall be so retired at the expiry of the term contemplated in that section, or of any extended term contemplated therein, as the case may be.”; 30

(e) by the substitution for subsection (4) of the following subsection: 35

“(4)An **[officer]** employee, other than a member of the services or an educator or a member of the State Security Agency, who has reached the age of 60 years may, subject in every case to the approval of the relevant **[executive authority]** head of department, be retired from the public service.”; 40

(f) by the substitution in subsection (5) for paragraphs (a) and (b) of the following paragraphs: 45

“(a) Subject to the terms and conditions of a contract contemplated in section 12(2), an executive authority may, at the request of an employee occupying the **[office]** post of a head of department, allow him or her to retire from the public service before the expiry of the term contemplated in section 12(2), or any extended term contemplated therein, and notwithstanding the absence of any reason for dismissal in terms of section 17(2) or the contract concluded with the employee, as the case may be, if sufficient reason exists for the retirement. 50

(b) If an **[officer]** employee is allowed to retire from the public service in terms of paragraph (a), he or she shall, notwithstanding anything to the contrary contained in subsection (4), be deemed to have retired in terms of that subsection, and he or she shall be entitled to such pension as he or she would have been entitled to if he or she had retired from the public service in terms of that subsection.”; 55

(g) by the substitution in subsection (6) for paragraph (a) of the following paragraph: 60

“(a) **[An executive authority]** A head of department may, at the request of an employee, allow him or her to retire from the public service before reaching the age of 60 years, notwithstanding the absence of any reason for dismissal in terms of section 17(2), if sufficient reason exists for the retirement.”; and 65

(h) by the substitution for subsection (7) of the following subsection: 70

“(7) If it is in the public interest to retain an **[officer]** employee, other than a member of the services or an educator or a member of the State Security Agency, in his or her post beyond the age at which he or she is required to be retired in terms of subsection (1), he or she may, with his or her consent and with the approval of the relevant **[executive** 75

**authority]** head of department, be so retained from time to time for further periods which shall not, except with the approval of Parliament granted by resolution, exceed in the aggregate two years.”.

**Amendment of section 16B of Act promulgated under Proclamation 103 of 1994, as inserted by section 24 of Act 30 of 2007**

5

10. Section 16B of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) If notice of a disciplinary hearing was given to an employee, the relevant **[executive authority]** head of department shall not agree to a period of notice of resignation which is shorter than the prescribed period of notice of resignation applicable to that employee.”.

**Amendment of section 17 of Act promulgated under Proclamation 103 of 1994, as amended by section 14 of Act 47 of 1997, and substituted by section 25 of Act 30 of 2007**

11. Section 17 of the principal Act is hereby amended— 15

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) Subject to paragraph (b), the power to dismiss an employee shall vest in the relevant **[executive authority]** head of department and shall be exercised in accordance with the Labour Relations Act.”; and 20

(b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) If an employee who is deemed to have been so dismissed, reports for duty at any time after the expiry of the period referred to in paragraph (a), the relevant **[executive authority]** head of department may, on good cause shown and notwithstanding anything to the contrary contained in any law, approve the reinstatement of that employee in the public service in his or her former or any other post or position, and in such a case the period of his or her absence from official duty shall be deemed to be absence on vacation leave without pay or leave on such other conditions as the **[said authority]** head of department may determine.”. 25 30

**Amendment of section 30 of Act promulgated under Proclamation 103 of 1994, as amended by section 25 of Act 47 of 1997, and substituted by section 26 of Act 30 of 2007**

12. Section 30 of the principal Act is hereby amended— 35

(a) by the substitution for subsection (1) of the following subsection:

“(1) No employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the relevant department, except with the written permission of the **[executive authority of the]** head of department.”; 40

(b) by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of subsection (1) the **[executive authority]** head of department shall at least take into account whether or not the outside work could reasonably be expected to interfere with or impede the effective or efficient performance of the employee’s functions in the department or constitute a contravention of the code of conduct contemplated in section 41(1)(b)(v).”; and 45

(c) by the substitution for subsection (3) of the following subsection:

“(3) (a) The **[executive authority]** head of department shall decide whether or not to grant permission, contemplated in subsection (1), within 30 days after the receipt of the request from the employee in question. 50

(b) If the **[executive authority]** head of department fails to make a decision within the 30 day period, it would be deemed that such permission was given.”. 55

**Amendment of section 31 of Act promulgated under Proclamation 103 of 1994, as amended by section 26 of Act 47 of 1997, and substituted by section 27 of Act 30 of 2007**

13. Section 31 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 5  
“(d) The provisions of this section shall also apply to an [officer] employee who is a head of department, and in such a case a reference to a head of department shall be construed as a reference to the Treasury.”;
  - (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 10  
“(b) In circumstances regarded by the relevant [executive authority] head of department as exceptional, the [said authority] head of department may approve of paying out of revenue an amount equal to that salary, allowance, fee, bonus or honorarium, or a portion thereof, to the employee concerned.”; and 15
  - (c) by the substitution for subsection (3) of the following subsection:  
“(3) For the purposes of subsection (1)(a)(i)—
    - (a) ‘this Act’ includes any law repealed by this Act;
    - (b) ‘determination of the Minister’ includes any recommendation of the [Public Service] Commission, [established by section 209 (1) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), or of] any commission for administration[, public service commission] or other like institution established by or under, or which functioned in accordance with, any such law; and 20
    - (c) ‘section 30[(b)]’ includes any corresponding provision of any such law.”. 25

**Amendment of section 32 of Act promulgated under Proclamation 103 of 1994, as substituted by section 28 of Act 30 of 2007**

14. Section 32 of the principal Act is hereby amended— 30
- (a) by the substitution for subsection (1) of the following subsection:  
“(1) Subject to such conditions as may be prescribed[**an**]
    - (a) the relevant executive authority responsible for that portfolio, in respect of the head of department; or
    - (b) the head of a department, in respect of other employees, 35  
may direct [**an**] such head or employee under his or her control temporarily to perform any functions within the relevant department, other than those ordinarily assigned to [the] that head or employee or appropriate to his or her grade or post.”; and
  - (b) by the substitution for subsection (2) of the following subsection: 40  
“(2) (a) An employee may be directed, in writing, to act in a post within the relevant department, subject to such conditions as may be prescribed.
    - (b) An acting appointment in terms of paragraph (a) shall be made—
      - (i) by the employee occupying the post, unless otherwise determined by the head of department; 45
      - (ii) in the case of a vacant post of a head of department, by the relevant executive authority responsible for that portfolio, after consultation with the President or Premier, as the case may be; or
      - (iii) in the case of any other vacant post, by the head of department.” 50

**Amendment of section 35 of Act promulgated under Proclamation 103 of 1994, as substituted by section 28 of Act 47 of 1997 and section 31 of Act 30 of 2007**

15. Section 35 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:
- “(5) For the purposes of subsections (1)(b) and (3)(b), the powers conferred upon the Commission by section 11 of the Commission Act shall be deemed to include the power to make rules, which are not inconsistent with the provisions of this section, as to the investigation of grievances concerning official acts or 55

omissions, and ‘prescribed’ means prescribed by the Commission by rule under the Commission Act.”.

**Insertion of section 36A in Act promulgated under Proclamation 103 of 1994**

16. The principal Act is hereby amended by the insertion after section 36 of the following section:

**“Limitation of political rights**

**36A.** (1) A head of department or an employee directly reporting to the head of department may not hold political office in a political party, whether in a permanent, temporary or acting capacity.  
(2) A person who has been appointed as a head of department or as an employee who directly reports to the head of department before subsection (1) takes effect, must comply with subsection (1) within one year of the commencement of subsection (1).  
(3) Except for the limitation of a head of department or an employee directly reporting to the head of department to hold political office, as contemplated in subsection (2), subsection (1) may not be construed as prohibiting a head of department or an employee directly reporting to the head of department from exercising their other political rights as contemplated in section 19 of the Constitution.”.

**Amendment of section 37 of Act promulgated under Proclamation 103 of 1994, as amended by section 29 of Act 47 of 1997, and substituted by section 33 of Act 30 of 2007**

17. Section 37 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:  
“(2) [An executive authority] A head of department may, only if it is allowed by regulation and to the extent prescribed—”.

**Amendment of section 38 of Act promulgated under Proclamation 103 of 1994, as amended by section 34 of Act 30 of 2007**

18. Section 38 of the principal Act is hereby amended—  
(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:  
“(a) If an incorrect salary, salary level, salary scale or reward is awarded to an employee, the relevant [executive authority] head of department shall correct it with effect from the date on which it commenced.”;  
(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:  
“(b) been overpaid or received any such other benefit not due to him or her—  
(i) an accounting officer shall recover such overpayment by way of deduction from the employee’s salary if the accounting officer and employee agree, in writing, on—  
(aa) the amount of the overpayment;  
(bb) a reasonable period for the repayment of the amount of overpayment; and  
(cc) the amount to be deducted from the employee’s salary, either in full or in monthly instalments, taking into consideration the employee’s income and current financial obligations: Provided that the total monthly deduction is not more than one-quarter of the employee’s monthly salary;  
(ii) an accounting officer shall, in the absence of agreement as contemplated in subparagraph (i), recover such amount of overpayment by way of legal proceedings;  
(iii) an accounting officer shall, in the event that the person is no longer in the employ of a department, recover such amount by

- way of a deduction from any monies owing to such person by the State or by way of legal proceedings;
- (iv) an accounting officer shall, in the event that the employee is in the employ of another department, request the accounting officer of that other department to recover, in the manner contemplated in subparagraph (i), the overpayment made; 5
- (v) that other benefit shall be discontinued or withdrawn as from a current date, but the employee shall have the right to be compensated by the State for any patrimonial loss, which he or she has suffered as a result of that discontinuation or withdrawal.”. 10

**Amendment of section 42A of Act promulgated under Proclamation 103 of 1994, as inserted by section 32 of Act 47 of 1997, and substituted by section 37 of Act 30 of 2007**

19. Section 42A of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph: 15  
“(a) the President, delegate to [the Deputy President or a Minister] a member of Cabinet any power conferred on the President by section 12; or”.

**Short title and commencement**

20. This Act is called the Public Service Amendment Act, 2023, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 20

## MEMORANDUM ON THE OBJECTS OF THE PUBLIC SERVICE AMENDMENT BILL, 2023

### 1. BACKGROUND

- 1.1 The Public Service Act, 1994 (Proclamation 103 of 1994) (“the principal Act”) was last amended in 2007 through the Public Service Amendment Act, 2007 (Act No. 30 of 2007), to introduce a new dispensation in the public service in line with the basic values and principles contained in the Constitution of the Republic of South Africa, 1996 (“the Constitution”) and other legislative reforms applicable to the public service.
- 1.2 Following the proposed policy reforms initiated within government through the National Development Plan 2030 (“NDP”), various court decisions relating to the field of public administration and matters identified by the South African Law Reform Commission’s Report on legislation administered by the Department of Public Service and Administration, it has become necessary to amend the principal Act.
- 1.3 The Public Service Amendment Bill, 2023 (the “Bill”) seeks to amend the principal Act to—
  - (a) devolve administrative powers to the heads of department while retaining strategic powers with the executive authorities;
  - (b) augment the functions of the Director-General in the Presidency to include the functions envisaged by the NDP for an administrative head of the public service;
  - (c) clarify the role of the President and the Premier, respectively, as the executive authority in respect of heads of department;
  - (d) correct the reference in section 31(3)(c);
  - (e) amend section 35 to clarify the role of the Public Service Commission in determining the internal grievance procedures;
  - (f) limit the political rights of heads of department and employees reporting directly to heads of department;
  - (g) amend section 38 to provide an alternative mechanism for departments to lawfully deduct overpaid remuneration from an employee’s salary; and
  - (h) amend section 42A(3) to clarify the meaning of “Minister”.

### 2. OBJECTS OF THE BILL

The main objects of the Bill are to provide for the devolution of administrative powers to heads of department; to augment the role of the Director-General in the Presidency to support the President; to provide an alternative mechanism for the recovery of overpaid remuneration and benefits; to clarify the role of the Public Service Commission in respect of grievances; and to clarify the role of the President and the Premier in the appointment and career incidents of heads of department.

### 3. CLAUSE-BY-CLAUSE SUMMARY OF THE BILL

#### 3.1 Clause 1

- 3.1.1 Clause 1 of the Bill provides for amendments to the definitions of “executive authority” and “heads of department” contained in the principal Act, and the addition of a definition of “political office” for ease of interpretation.
- 3.1.2 With regard to the definition of “executive authority”, the Bill provides for a new paragraph (b), which states that “*‘executive authority’, in relation to a head of a national department or national government component, means the President and in relation to a head of the Office of a Premier, provincial department or provincial government component, means the Premier*”. Section 85(1) and (2) of the Constitution provides that the executive authority of the Republic



is vested in the President and the President exercises the executive authority, together with the other members of the Cabinet. The proposed amendment is aligned to the policy objective, which seeks to clarify the role of the President as executive authority in respect of heads of department.

### **3.2 Clause 2**

- 3.2.1 Clause 2 of the Bill seeks to substitute section 3(7) of the principal Act, which regulates the powers and duties of the executive authority. Section 3(7) of the principal Act was redrafted to provide strategic powers to the executive authority and to remove administrative powers from the executive authority to enable the executive authority to focus on providing strategic and policy direction. The necessary checks and balances for the delineation of the powers between the executive authority and the head of department have been provided for to ensure accountability.
- 3.2.2 Clause 2 further provides the executive authority with powers to intervene in the event that a head of department fails or refuses to fulfil a power or duty in terms of the Act. The provision is important as, currently, a head of department exercises administrative powers as delegated by an executive authority, who may withdraw the said delegation in the event that the head fails or refuses to perform certain powers or duties delegated to him or her. The devolution of administrative powers from the executive authority to the head of department means that the executive authority can no longer withdraw a delegation and therefore necessitates a process to allow the executive authority to intervene where justified.

### **3.3 Clause 3**

Clause 3 of the Bill proposes to amend the provisions of section 5 of the principal Act by relocating section 3(8) of the principal Act to the new section 5(9). The provision is being amended to include the head of department and to provide for both the executive authority and the head of department to deal with any matter which relates to or arises from the employment or conditions of service of a person formerly employed in the public service.

### **3.4 Clause 4**

- 3.4.1 Clause 4 of the Bill seeks to amend section 7(3) of the principal Act to provide for the devolution of administrative powers to heads of department in national departments, provincial departments and government components. The amendments to section 7(3) provide for the head of department to—
- (a) report to the executive authority as and when required;
  - (b) assist the executive authority in fulfilling the executive authority's accountability and responsibility obligations as contemplated in section 92 of the Constitution; and
  - (c) implement the strategic plan.
- 3.4.2 In addition, clause 4 seeks to amend section 7 of the principal Act to provide for additional functions of the Director-General in the Presidency to align with the NDP objective to create an administrative head of the public service to whom Directors-General would report on operational, organisational and administrative matters.

### **3.5 Clause 5**

Clause 5 of the Bill seeks to amend section 9 of the principal Act to provide the head of department with the authority to appoint persons in a department. The devolution of this power is to ensure the alignment of the financial



responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.

### **3.6 Clause 6**

Clause 6 of the Bill seeks to amend section 13 of the principal Act to provide that a head of department may appoint an employee on probation for such period as may be prescribed. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.

### **3.7 Clause 7**

Clause 7 of the Bill seeks to amend section 14 of the principal Act to provide the head of department with the authority to transfer employees within a department and to other departments.

### **3.8 Clause 8**

Clause 8 of the Bill seeks to amend section 14A of the principal Act to provide for the continuation of employment when a person, who is already employed by an organ of state, is appointed in terms of section 9.

### **3.9 Clause 9**

3.9.1 Clause 9 of the Bill seeks to amend section 16 of the principal Act, which deals with retirement and the retention of services. It is proposed that the term “officer” be substituted with the defined term “employee”.

3.9.2 Furthermore, the proposed amendment seeks to provide the power to a head of department to authorise an employee to retire from the public service before reaching the age of 60. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.

### **3.10 Clause 10**

Clause 10 of the Bill seeks to amend section 16B of the principal Act to prohibit a head of department from agreeing to a shorter notice period for resignation, in instances where an employee wishes to resign after notice of disciplinary hearing was given against the employee. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.

### **3.11 Clause 11**

Clause 11 of the Bill seeks to amend section 17 of the principal Act to provide a head of department with the power to dismiss an employee. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.

### **3.12 Clause 12**

Clause 12 of the Bill seeks to amend section 30 of the principal Act to provide that no employee shall perform or engage himself or herself to perform

remunerative work outside his or her employment in the relevant department, except with the permission of the head of department. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.

### **3.13 Clause 13**

3.13.1 Clause 13 of the Bill seeks to amend section 31 of the principal Act to allow the head of department, in exceptional circumstances, to approve the paying out of revenue an amount equal to that salary, allowance, fee, bonus or honorarium, or a portion thereof, to an employee. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.

3.13.2 Clause 13 further seeks to make technical amendments to section 31(3) to take into account concepts already defined and to correct the reference to “section 30(b)”.

### **3.14 Clause 14**

Clause 14 of the Bill seeks to amend section 32 of the principal Act to provide that—

- (a) a head of department may direct employees to temporarily perform other functions within the department; and
- (b) an executive authority may direct a head of department to temporarily perform other functions within the department;
- (c) an employee may be appointed to act in a post in the relevant department by the head of department or the employee occupying the post; and
- (d) an executive authority may appoint an employee to act as a head of department, after consultation with the President.

### **3.15 Clause 15**

Clause 15 of the Bill seeks to amend section 35(5) of the principal Act to provide that the Minister for the Public Service and Administration shall be responsible to determine the procedure to be utilised when employees refer grievances within the department (i.e. the internal process).

### **3.16 Clause 16**

Clause 16 of the Bill seeks to insert section 36A into the principal Act to prohibit a head of department and an employee directly reporting to the head of department from holding political office. The term “political office” has been defined to reflect the decision making echelon of political parties. Other political rights of heads of department and employees directly reporting to the head of department are unaffected by the amendment and they remain entitled to enjoy and exercise these rights freely. The purpose of the prohibition in respect of a head of department and an employee directly reporting to the head of department from holding office in a political party is to ensure that there is a clear delineation between the political and administrative roles and responsibilities for heads of department and the influence employees reporting to a head of department may have in the department. The provision is limited to heads of department and employees directly reporting to heads and employees of department as these heads are responsible for administrative decisions.

### **3.17 Clause 17**

Clause 17 of the Bill seeks to amend section 37 of the principal Act to permit the head of department, if it is allowed by a regulation and to the extent prescribed, to grant an employee salaries higher than the minimum amounts of

the appropriate salary levels of the applicable salary scale, grant them special advancement in salaries within the salary scale applicable to them and grant them a salary in accordance with a higher salary level or any other reward, if they have an exceptional ability or special qualification. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.

### **3.18 Clause 18**

Clause 18 of the Bill seeks to amend section 38(2)(b)(i) of the principal Act, which deals with the recovery of remuneration that was wrongly granted to an employee. The provision was declared unconstitutional by the Constitutional Court in the matter of *Public Servants Association obo Ubogu v Head of the Department of Health, Gauteng and Others* 2018 (2) BCLR 184 (CC). The amendment seeks to align with the provisions of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), and sets in place mechanisms to ensure that the rights of employees are not undermined.

### **3.19 Clause 19**

Clause 19 of the Bill seeks to clarify the interpretational challenges in section 42A(3)(a) of the principal Act in so far as they relate to the President's power to delegate matters relating to the appointment and career incidents of heads of department. This section is proposed to be amended to substitute the current references to "Deputy President" and "Minister" in the principal Act with a reference to "a member of Cabinet".

### **3.20 Clause 20**

Clause 20 of the Bill provides for the short title of the Bill, once enacted, which is the Public Service Amendment Act, 2023.

## **4. DEPARTMENTS/BODIES/PERSONS TO BE CONSULTED**

National and provincial departments, organised labour, NEDLAC and the public.

## **5. PARLIAMENTARY PROCESS**

- 5.1 The Constitution distinguishes between four categories of Bills, as follows: Bills amending the Constitution (section 74); Ordinary Bills not affecting provinces (section 75); Ordinary Bills affecting provinces (section 76); and Money Bills (section 77). A Bill must be correctly tagged otherwise it would be constitutionally invalid.
- 5.2 The Bill must be considered against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 and Schedule 5 to the Constitution. In accordance with section 76(3) of the Constitution, a Bill must be dealt with in accordance with the procedure established by either section 76(1) or (2), if it falls within a functional area listed in Schedule 4 to the Constitution, or provides for legislation envisaged in section 65(2), section 163, section 182, section 195(3) and (4), section 196 and section 197.
- 5.3 This Bill deals with matters that relate to the public service, as contemplated in section 197 of the Constitution, which is referred to in section 76(3)(f) of the Constitution.
- 5.4 The Office of the Chief State Law Adviser and the Department of Public Service and Administration are of the view that this Bill must be dealt with in accordance with the procedure set out in section 76 of the Constitution because the Bill deals with matters that relate to the public service, as contemplated in section 197 of the Constitution.

- 5.5 The Office of the Chief State Law Adviser is further of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.









REPUBLIC OF SOUTH AFRICA

---

# INDEPENDENT MUNICIPAL DEMARCATORY AUTHORITY BILL

---

*(As introduced in the National Assembly (proposed section 76)); (explanatory  
summary of Bill and prior notice of its introduction published in  
Government Gazette No. 46552 of 15 June 2022)  
(The English text is the official text of the Bill)*

---

(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

[B 14B—2022]

ISBN 978-1-4850-0923-8

No. of copies printed .....250

# BILL

**To provide for the establishment, functions and powers of the Independent Municipal Demarcation Authority; to provide for the criteria and procedures for the determination and redetermination of municipal boundaries; to provide for the delimitation of wards; to provide for the establishment of the Demarcation Appeals Authority; to provide for municipal capacity assessments; and to provide for matters incidental thereto.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## ARRANGEMENT OF SECTIONS

### CHAPTER 1

#### DEFINITIONS AND PURPOSE OF ACT 5

1. Definitions
2. Purpose of Act

### CHAPTER 2

#### INDEPENDENT MUNICIPAL DEMARCATION AUTHORITY

##### *Part 1* 10

##### *Establishment, status, functions and powers of Authority*

3. Establishment of Authority
4. Status of Authority
5. Functions of Authority
6. Powers of Authority 15

##### *Part 2*

##### *Board*

7. Composition of Board
8. Responsibilities of Board
9. Qualifications of Board members
10. Appointment of Board members
11. Term of office, termination and resignation of Board member
12. Conditions of appointment of Board members
13. Chairperson and deputy chairperson
14. Meetings 25
15. Rules of procedure
16. Committees
17. Delegation of and instruction to exercise powers and perform functions by Board
18. Conduct of Board members 30

### **Part 3**

#### ***Administration and staff***

- 19. Chief Executive Officer
- 20. Conditions of employment of employees
- 21. Contracting for services 5

### **Part 4**

#### ***Finances***

- 22. Finances of Authority

## **CHAPTER 3**

### **MUNICIPAL BOUNDARY DEMARCATION 10**

#### **Part 1**

##### ***Criteria for determination or redetermination of municipal boundaries***

- 23. Determination or redetermination of municipal boundary objectives
- 24. Factors to be taken into account
- 25. Determination of category of municipality 15

#### **Part 2**

##### ***Determination or redetermination of municipal boundary***

- 26. Initiation of determination or redetermination of municipal boundary process
- 27. Notification of intention to consider request for determination or redetermination of municipal boundary 20
- 28. Conducting investigations on determination or redetermination of municipal boundary

#### **Part 3**

##### ***Public participation for determination or redetermination of municipal boundary***

- 29. Public consultation for determination or redetermination of municipal boundary 25
- 30. Mechanisms, processes and procedures for public participation
- 31. Publication of and objection to determination or redetermination of municipal boundary
- 32. When determination or redetermination of municipal boundary takes effect 30

#### **Part 4**

##### ***Delimitation of wards***

- 33. Delimitation of ward process
- 34. Number of wards
- 35. Criteria for delimitation of wards 35
- 36. Public participation in delimitation of wards
- 37. Publication of and objection to delimitation of wards

#### **Part 5**

##### ***Demarcation Appeals Authority***

- 38. Establishment and constitution of Appeals Authority 40
- 39. Functions of Appeals Authority
- 40. Qualifications of members of Appeals Authority
- 41. Term of office of members of Appeals Authority
- 42. Chairperson and deputy chairperson of Appeals Authority
- 43. Appeals Authority proceedings 45
- 44. Conflicts and disclosure of interest by members of Appeals Authority
- 45. Service by member of Appeals Authority after expiry of term of office
- 46. Remuneration and benefits of members of Appeals Authority

## CHAPTER 4

### MUNICIPAL CAPACITY ASSESSMENTS

47. Municipal capacity assessments

## CHAPTER 5

### MISCELLANEOUS

5

48. Regulations and guidelines  
 49. Offences and penalties  
 50. Amendment of laws  
 51. Transitional arrangements  
 52. Short title and commencement 10

## SCHEDULE

Laws amended

## CHAPTER 1

### DEFINITIONS AND PURPOSE OF ACT

#### Definitions 15

1. In this Act, unless the context otherwise indicates—
- “**Appeals Authority**” means the Demarcation Appeals Authority established by section 38;
- “**Authority**” means the Independent Municipal Demarcation Authority established by section 3; 20
- “**Board**” means the Board of the Independent Municipal Demarcation Authority contemplated in section 7;
- “**capacity**”, in relation to a municipality, includes the administrative and financial management capacity and infrastructure that enables a municipality to collect revenue and to govern on its own initiative the local government affairs of its community; 25
- “**Chief Executive Officer**” means the person who is appointed in terms of section 19(1);
- “**committee**” means a committee established in terms of section 16, and includes an investigating committee as contemplated in section 28; 30
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**demarcation**” means the determination or redetermination of municipal boundaries and the delimitation of wards;
- “**Electoral Commission**” means the Electoral Commission established by section 3 of the Electoral Commission Act, 1996 (Act No. 51 of 1996); 35
- “**employee**” is a person employed by the Authority and a person seconded thereto;
- “**financial year**” means the financial year of the Authority, commencing on 1 April and ending on 31 March;
- “**local community**” means a group of people living in an area directly or indirectly affected by a municipal boundary determination or ward delimitation; 40
- “**local house**” means a local house of traditional and Khoi-San leaders provided for in section 50 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019);
- “**MEC for local government**” means the Member of the Executive Council responsible for local government matters in a province; 45
- “**Minister**” means the Minister responsible for local government;
- “**municipality**” means a municipality contemplated in section 155(6) of the Constitution and section 2 of the Municipal Systems Act;
- “**municipal capacity assessment**” means the assessment of the capacity of a municipality by the Authority to perform the functions and exercise the powers vested in the municipality, as contemplated in section 47; 50
- “**municipal financial year**” means a financial year as defined in section 1 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

**“Municipal Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**“National House”** means the National House of Traditional and Khoi-San Leaders established in terms of section 27 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019);

**“organ of state”** means an organ of state as defined in section 239 of the Constitution;

**“political office”**, in relation to a political party or structure thereof, means— 10

(a) the position of chairperson, deputy chairperson, secretary, deputy secretary, treasurer or an elected or appointed decision-making position of a registered political party nationally or in any province, region or other area in which that party operates; or

(b) any position in a political party that is equivalent to a position mentioned in paragraph (a), irrespective of the title designated to the position; 15

**“Promotion of Administrative Justice Act”** means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

**“provincial house”** means a provincial house of traditional and Khoi-San leaders as contemplated in section 49 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019); 20

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“this Act”** includes the regulations; and

**“traditional leadership”** has the meaning ascribed to it in section 1 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019). 25

## **Purpose of Act**

2. The purpose of this Act is to provide for the establishment of the Independent Municipal Demarcation Authority and set the criteria and procedures for the determination or redetermination of municipal boundaries and delimitation of wards by the Authority. 30

## **CHAPTER 2**

### **INDEPENDENT MUNICIPAL DEMARCATION AUTHORITY**

#### **Part 1**

#### ***Establishment, status, functions and powers of Authority*** 35

#### **Establishment of Authority**

3. (1) The Independent Municipal Demarcation Authority is hereby established.

(2) The Authority consists of the—

(a) Board appointed in terms of section 7; and

(b) the administration and staff as contemplated in section 19. 40

#### **Status of Authority**

4. The Authority—

(a) is a constitutional institution listed under Schedule 1 of the Public Finance Management Act and is subject to the Public Finance Management Act; and

(b) must be independent, impartial and perform its functions without fear, favour or prejudice. 45

#### **Functions of Authority**

5. The functions of the Authority are to—

(a) determine or redetermine municipal boundaries in accordance with the criteria provided for in this Act, legislation enacted in terms of Chapter 7 of the Constitution and any other applicable legislation; 50

(b) delimit wards for all municipalities that must have wards;

- (c) render an advisory service in respect of matters provided for in this Act and other appropriate legislation; and
- (d) conduct municipal capacity assessments.

### **Powers of Authority**

- 6.** The Authority may do all that is necessary or expedient to perform its functions effectively, which includes the powers to— 5
- (a) determine its own staff establishment and appoint employees in posts on the staff establishment, having due regard to available funds;
  - (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act or function; 10
  - (c) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;
  - (d) open and operate its own bank account;
  - (e) perform legal acts, including acts in association with or on behalf of any other person or organ of state; 15
  - (f) institute or defend any legal action;
  - (g) collect and disseminate relevant information; and
  - (h) do anything that is necessary in terms of this Act in order to exercise any of its powers or perform any of its functions.

## **Part 2** 20

### **Board**

### **Composition of Board**

- 7.** (1) The Board consists of no fewer than seven and no more than 10 members appointed by the President in terms of section 10.
- (2) The composition of the Board must— 25
- (a) broadly reflect the composition of the South African society; and
  - (b) collectively represent a pool of knowledge concerning issues relevant to demarcation.

### **Responsibilities of Board**

- 8.** (1) The business and affairs of the Authority must be managed by the Board. 30
- (2) The Board is responsible for the corporate governance of the Authority, including—
- (a) steering the Authority and setting the strategic direction;
  - (b) approving policy and planning that give effect to the strategic direction;
  - (c) overseeing and monitoring the implementation and execution of policy and planning by the Authority; and 35
  - (d) ensuring accountability for the Authority's performance.
- (3) The Board may exercise any other power and perform any other function that it is authorised to do in terms of this Act.

### **Qualifications of Board members** 40

- 9.** (1) A member of the Board must be a South African citizen and have the necessary relevant qualifications, experience and knowledge in relation to—
- (a) local government; and
  - (b) any of the following: 45
    - (i) Development economics;
    - (ii) integrated development planning;
    - (iii) community development;
    - (iv) traditional leadership and traditional communities;
    - (v) local government and municipal administration;
    - (vi) municipal finance; 50
    - (vii) municipal services;
    - (viii) social or economic geography;
    - (ix) town and regional planning;
    - (x) legal and constitutional matters affecting local government;

- (xi) land survey, cartography and geographic information systems;
- (xii) public health care;
- (xiii) transport planning; or
- (xiv) information technology.

(2) The following persons are disqualified from becoming or remaining a member of the Board: 5

- (a) An unrehabilitated insolvent;
- (b) a person who is placed under curatorship;
- (c) a person who is declared to be of unsound mind by a competent court having jurisdiction; 10
- (d) a person who has been convicted of an offence and sentenced to imprisonment without the option of a fine for a period of not less than 12 months;
- (e) a person holding a political office; or
- (f) a full-time employee of an organ of state.

#### **Appointment of Board members** 15

10. (1) Before members of the Board are appointed, the Minister must—

- (a) by notice in the *Gazette*, and in an advertisement circulating in a newspaper nationally, taking into account section 6(3)(a) of the Constitution—
  - (i) invite suitably qualified persons who are eligible to be members of the Board to apply for appointment as a member of the Board; and 20
  - (ii) request members of the public to nominate suitably qualified persons, who are eligible to be members of the Board for such appointment, within the period and in the manner specified in the notice or advertisement; and
- (b) after consultation with the President, establish a selection panel consisting 25 of—
  - (i) a judge of the Constitutional Court designated by the Chief Justice, who must also be the convenor of the panel;
  - (ii) a person with specific knowledge of demarcation designated by the Minister after consultation with the MECs for local government; 30
  - (iii) a person with expert knowledge of demarcation designated by organised local government;
  - (iv) the Chairperson of the Commission for Gender Equality or a Commissioner of the Commission for Gender Equality designated by such Chairperson; 35
  - (v) the Chairperson of the Portfolio Committee in the National Assembly responsible for local government, or a member of the Portfolio Committee designated by such Chairperson;
  - (vi) the Chairperson of the Select Committee in the National Council of Provinces responsible for local government matters, or a member of the Select Committee designated by such Chairperson; and 40
  - (vii) the Chairperson of the National House, or a member of the National House designated by such Chairperson.

(2) For the purposes of any subsequent establishment of a selection panel during the term of the same Board, a person designated in terms of subsection (1)(b) remains 45 designated until replaced by the designating functionary.

(3) The selection panel may determine its own procedure including its decision-making procedure which must be fair and transparent.

(4) The selection panel must compile a list of nominations and applications received, must consider such nominations and applications, and must from this list recommend 50 suitably qualified persons to be appointed as members of the Board.

(5) The names of persons recommended to be appointed as Board members must be submitted to the Minister and must consist of three names in addition to the number of appointments that must be made.

(6) If the selection panel is unable to compile a list consisting of the required number of nominees, the procedure set out in subsections (1)(a), (4) and (5) must be repeated, and applicants who applied in the first round—

- (a) need not reapply; and
- (b) must be considered when the list is compiled in the second round.

(7) The President must make the required number of appointments from the list and 60 publish the names of appointed members of the Board in the *Gazette*.

- (8) When there is a vacancy on the Board, the Minister must within 30 days of receiving the Board's written notification of the vacancy—
- (a) recommend to the President to fill the vacancy from the additional names that were submitted to the President in terms of subsection (5); or
  - (b) initiate the process outlined in this section if none of the additional names referred to in subsection (5) is available to fill the vacancy. 5

### **Term of office, termination and resignation of Board member**

**11.** (1)(a) A member of the Board is appointed for a term not exceeding five years, calculated from the date of appointment by the President, and such term may not exceed a period of six months after the commencement of the term of the next Municipal Council. 10

(b) When there is a vacancy on the Board, the President must appoint a new member, from the list of nominations received from the Minister, within a period of three months from the date on which that vacancy arose.

(2) When the term of a member of the Board expires, such member may, subject to subsection (3), be reappointed in accordance with the procedure provided for in section 10. 15

(3) A member of the Board may not hold office for a period of more than two consecutive terms.

(4) Members of the Board are appointed on a part-time basis, except for the Chairperson, whose appointment may either be full-time or part-time. 20

(5) A person ceases to be a member of the Board when that person—

- (a) is no longer eligible under section 9 to be a member;
- (b) resigns;
- (c) is absent from three meetings of the Board without being granted leave of absence by the Chairperson; 25
- (d) has completed his or her term of office; or
- (e) is removed from office in terms of subsection (7).

(6) A member of the Board may resign by giving at least three months' written notice to the Minister, and the Minister may accept a shorter notice period. 30

(7) A member of the Board is regarded as having resigned if that member—

- (a) accepts nomination for the National Assembly, the National Council of Provinces, a provincial legislature or a municipal council; or
- (b) is a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of a provincial legislature or a member of a Municipal Council and fails to resign from such office within 30 days of having been appointed as a member of the Board. 35

(8) (a) Subject to the Promotion of Administrative Justice Act, the President may remove a member of the Board from office—

- (i) for misconduct; 40
- (ii) on account of continued ill-health;
- (iii) on account of incompetence;
- (iv) if he or she is no longer a fit and proper person; or
- (v) on account of the Minister's loss of confidence in the member.

(b) A decision to remove a member of the Board on the ground of misconduct or incompetence must be based on a finding to that effect by an investigating tribunal appointed by the President. 45

(c) The President may suspend a member of the Board whilst the member is subject to an investigation contemplated in paragraph (b).

### **Conditions of appointment of Board members** 50

**12.** The Minister, with the concurrence of the Minister of Finance, must determine the conditions of appointment of the members of the Board, taking into account—

- (a) the conditions of appointment of members of other institutions referred to in section 219(5) of the Constitution;
- (b) the role, duties and responsibilities of a member of the Board; 55
- (c) affordability in relation to the responsibilities of the Board; and
- (d) the level of expertise and experience required for a member of the Board.



### Chairperson and deputy chairperson

- 13.** (1) The President appoints one member of the Board as Chairperson and another member as deputy chairperson of the Board.
- (2) The Chairperson and the deputy chairperson of the Board hold office as Chairperson and deputy chairperson, respectively, for the duration of their term of office as members of the Board. 5
- (3) The deputy chairperson of the Board acts as the Chairperson if the—
- (a) Chairperson of the Board is absent or unable to perform the functions of Chairperson; or
  - (b) the office of Chairperson is vacant. 10
- (4) The Chairperson is, for the purposes of the Public Finance Management Act, the executive authority of the Board.

### Meetings

- 14.** (1) The Chairperson of the Board decides when and where the meetings of the Board take place and must convene a meeting if a majority of the members of the Board requests the Chairperson in writing to convene such a meeting at a time and place set out in the request. 15
- (2) The Chairperson of the Board presides at meetings of the Board but if the Chairperson is absent from the meeting the deputy chairperson presides: Provided that if both the Chairperson and the deputy chairperson are absent from a meeting, the members present must elect another member to preside at the meeting. 20
- (3) The majority of the members of the Board in office constitutes a quorum for a meeting of the Board.
- (4)(a) A question before the Board is decided by a supporting vote of at least the majority of the members of the Board. 25
- (b) In the event where a majority vote cannot be reached because there is an equal amount of votes for and against a decision, the Chairperson of the meeting will have the casting vote.

### Rules of procedure

- 15.** (1) The Board must— 30
- (a) determine the rules of procedure for conducting meetings; and
  - (b) keep minutes of its proceedings and decisions.
- (2) The Board may, by notice in the *Gazette*, make rules regarding ancillary or incidental administrative or procedural matters that are necessary for the proper performance by the Board of its functions. 35

### Committees

- 16.** (1) The Board must establish the following committees:
- (a) The Audit and Risk Governance Committee; and
  - (b) the Remuneration and Performance Committee. 40
- (2) The Board may—
- (a) establish one or more committees to assist the Board in the performance of its functions or the exercise of its powers; and
  - (b) dissolve a committee at any time.
- (3) The Board— 45
- (a) must determine the functions of a committee;
  - (b) must appoint the Chairperson and other members of a committee;
  - (c) may authorise a committee to co-opt advisory members within limits determined by the Board;
  - (d) may amend the composition of the committee from time to time; and
  - (e) may determine a committee's procedure. 50
- (4) When appointing members to a committee, the Board is not restricted to members of the Board, but at least one member of the committee must be a member of the Board and the criteria as set out in section 9(2) apply equally to the appointment of members of a committee.
- (5) The Board determines the remuneration, allowances and other conditions of service of members of a committee who are not— 55

- (a) members of the Board;
  - (b) employees;
  - (c) in the service of an organ of state,
- taking into account the limitations to the scales published by either the National Treasury or the Department of Public Service and Administration; and 5
- (d) the names of the members of a committee must be published on the website of the Authority to ensure transparency.

### **Delegation of and instruction to exercise powers and perform functions by Board**

- 17.** (1) The Board may, for the proper exercise of its powers and performance of its functions— 10
- (a) delegate any of its powers and functions, excluding the power to make the final decision on demarcation, to—
    - (i) a member of the Board;
    - (ii) a committee of the Board; or
    - (iii) an employee. 15
  - (b) instruct any member of the Board, committee of the Board or employee to exercise any of the powers or perform any of the functions of the Board.
- (2) A delegation or instruction in terms of subsection (1)—
- (a) is subject to any conditions and directions the Board may impose;
  - (b) does not divest the Board of the responsibility concerning the exercise of the powers or the performance of the functions; and 20
  - (c) must be in writing.
- (3) The Board may confirm, vary or revoke any decision taken by a member of the Board, committee of the Board or employee, in consequence of a delegation or instruction. 25

### **Conduct of Board members**

- 18.** (1) A member of the Board—
- (a) must perform the functions of office in good faith and without fear, favour or prejudice;
  - (b) must disclose any personal or any private business interest that such member or any spouse, partner, close relative or business associate of that member may have in any matter before the Board and must withdraw from the proceedings of the Board when that matter is considered by the Board;
  - (c) may not use the position or privileges of his or her office for private gain or improperly to benefit another person; 35
  - (d) may not act in any way that compromises the credibility, impartiality, independence or integrity of the Board; and
  - (e) may not be contracted for professional services by the Authority.
- (2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct. 40

## **Part 3**

### ***Administration and staff***

#### **Chief Executive Officer**

- 19.** (1) The Board must appoint a suitably qualified and experienced person as Chief Executive Officer. 45
- (2) The person appointed as Chief Executive Officer holds office—
- (a) for an agreed term, not exceeding five years, which may be renewed only once for the same or a shorter period; and
  - (b) subject to the terms and conditions as determined by the Board.
- (3) The Chief Executive Officer is the head of the administration of the Authority and is responsible for— 50
- (a) the formation and development of an efficient administration;
  - (b) the organisation, control and management of all staff, including persons seconded to the Board from any other organ of state;
  - (c) the maintenance of discipline; and
  - (d) implementing decisions of the Board. 55

- (4) The Chief Executive Officer—
- (a) is the accounting officer, in accordance with the Public Finance Management Act, and must keep the necessary accounting and other related records; and
  - (b) must exercise his or her powers and perform his or her functions as he or she is instructed to do or as delegated to him or her by the Board or conferred upon him or her by this Act or any other legislation. 5
- (5) Whenever the Chief Executive Officer is for any reason absent or unable to perform his or her functions, or whenever a vacancy in the office of chief executive officer occurs, the Board must designate a suitably qualified senior member of the administration to act as Chief Executive Officer until the Chief Executive Officer resumes his or her functions or a Chief Executive Officer is appointed in terms of subsection (1). 10
- (6) A member of the administration designated by the Board to act in the position of Chief Executive Officer as contemplated in subsection (5) must, while so acting, exercise the powers and perform the functions of the Chief Executive Officer as may be delegated to him or her by the Board or as he or she may be instructed by the Board to exercise or perform. 15
- (7) The Chief Executive Officer must appoint such employees of the Authority, in accordance with the organisational structure and delegations of authority approved by the Board, to enable the Authority to exercise its powers and to perform its functions effectively. 20

### **Conditions of employment of employees**

20. (1) An employee of the Authority is employed subject to the terms and conditions of employment determined by the Board.
- (2) The terms and conditions must comply with the principles of public administration as contained in the Public Administration Management Act, 2014 (Act No. 11 of 2014). 25
- (3) Officials seconded from organs of state to the administration of the Authority, perform their functions under the control and direction of the Chief Executive Officer.
- (4) Notwithstanding the provisions of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), any person— 30
- (a) appointed in terms of section 19 and this section, who immediately before the date of such appointment was a member of the Government Employees Pension Fund referred to in section 2 of that law, may remain such member notwithstanding such appointment; and 35
  - (b) appointed and who is not a member of the said Fund may become a member of that Fund as from the date of such appointment and, if applicable, must contribute thereto.

### **Contracting for services**

21. If the Authority contracts for the services of any person, other than an employee or member of the Board, to perform any specific activity or function, the Authority may, subject to section 20(2), remunerate that person in terms of its supply chain management policy or a written agreement between the Authority and that person, and may reimburse that person for expenses he or she has incurred in the performance of those services. 40

## **Part 4**

45

### **Finances**

#### **Finances of Authority**

22. (1) The Authority is funded by money appropriated annually by Parliament to enable it to exercise its powers and perform its functions effectively.
- (2) The Authority may receive money from any other source through the National Revenue Fund. 50
- (3) The Authority must refund to the National Revenue Fund any money paid to the Authority in terms of an appropriation under subsection (1) that is not utilised at the end of a financial year, unless otherwise agreed to by the Minister, acting with the concurrence of the Minister of Finance. 55

## CHAPTER 3

### MUNICIPAL BOUNDARY DEMARCATION

#### *Part 1*

#### *Criteria for determination or redetermination of municipal boundaries*

#### **Determination or redetermination of municipal boundary objectives** 5

- 23.** (1) When the Authority determines or redetermines a municipal boundary its objectives must be to establish an area that—
- (a) enables the municipality for that area to fulfil its constitutional obligations, including—
    - (i) the provision of democratic and accountable government for the local communities; 10
    - (ii) the provision of services to the communities in an equitable and sustainable manner;
    - (iii) the promotion of social and economic development; and
    - (iv) the promotion of a safe and healthy environment; 15
  - (b) enables effective local governance;
  - (c) has a tax base as inclusive as possible of users of municipal services in the municipality; and
  - (d) has the capacity to execute any other function in line with the Minister's and the MEC of local government's allocated powers and functions in accordance with the Municipal Structures Act. 20
- (2) The Authority must, in addition to the objectives listed in subsection (1), endeavour to attain the principles of spatial justice, spatial sustainability, efficiency, spatial resilience and good administration, as set out in the Spatial Planning and Land Use Management Act, 2013 (Act No.4 of 2013). 25

#### **Factors to be taken into account**

- 24.** In order to attain the objectives set out in section 23, the Authority must, when determining or redetermining a municipal boundary, take into account—
- (a) the interdependence of people, communities and economics as indicated by—
    - (i) existing and expected patterns of human settlement and migration; 30
    - (ii) employment;
    - (iii) commuting and dominant transport movements;
    - (iv) spending;
    - (v) use of amenities, recreational facilities and infrastructure; and
    - (vi) commercial and individual linkages; 35
  - (b) the need for cohesive, integrated and unfragmented areas, including metropolitan areas;
  - (c) the financial viability and administrative capacity of the municipality to perform municipal functions efficiently and effectively;
  - (d) the need to share and redistribute financial and administrative resources; 40
  - (e) provincial and municipal boundaries;
  - (f) areas of traditional rural communities;
  - (g) existing and proposed functional boundaries, including magisterial districts, voting districts, health, transport, police and census enumerator boundaries;
  - (h) existing and expected land use, social, economic and transport planning; 45
  - (i) the need for co-ordinated municipal, provincial and national programmes and services, including the needs for the administration of justice and health care;
  - (j) topographical, environmental and physical characteristics of the area;
  - (k) the administrative consequence of a determination or redetermination of a municipal boundary on— 50
    - (i) municipal creditworthiness;
    - (ii) existing municipalities, their council members and staff; and
    - (iii) any other relevant matter;
  - (l) the need to rationalise the total number of municipalities within different categories and of different types to achieve the objectives of effective and sustainable service delivery, financial viability and macro-economic stability; 55

- (m) common geo-statistical building blocks, which facilitate and support a standard geographical hierarchy;
- (n) relevant national development policies and plans which might impact on the nature of local government and its boundaries;
- (o) relevant national and provincial policies and legislation relating to the institutional or functional reorganisation of local government; 5
- (p) natural endowments, resources, assets, business investments and other drivers of economic growth; and
- (q) the views of the people and communities living in the area.

#### **Determination of category of municipality** 10

**25.** (1) The Board must—

- (a) apply the criteria set out in subsection (3) and determine whether an area in terms of the criteria must have a single category A municipality or whether it must have municipalities of both category C and category B as defined in the Municipal Structures Act; and 15
- (b) determine or redetermine the municipal boundaries of the area.

(2) The Board may determine that an area must have a category A municipality only after consultation with the Minister, the MEC for local government in the province concerned and organised local government.

(3) An area must have a single category A municipality if that area can reasonably be regarded as— 20

- (a) a conurbation featuring—
  - (i) areas of high population density;
  - (ii) an intense movement of people, goods and services;
  - (iii) extensive development; and 25
  - (iv) multiple business districts and industrial areas;
- (b) a centre of economic activity with a complex and diverse economy;
- (c) a single area for which integrated development planning is desirable; and
- (d) having strong interdependent social and economic linkages between constituent units. 30

### **Part 2**

#### ***Determination or redetermination of municipal boundary***

##### **Initiation of determination or redetermination of municipal boundary process**

**26.** (1) The Board may only determine or redetermine a municipal boundary regarding the categorisation, amalgamation or any boundary change which affect the movement of more than one whole ward in a municipality, every 10 years. 35

(2) The Board may determine or redetermine a municipal boundary mentioned in subsection (1) on—

- (a) its own initiative;
- (b) request from an individual or local community; 40
- (c) request by the Minister, MEC for local government or other statutory bodies; or
- (d) request by a municipality with the concurrence of any other municipality affected by the proposed determination or redetermination of a municipal boundary: 45

Provided that the application in terms of paragraphs (b), (c) and (d) is accompanied by a motivation in terms of the criteria as set down in sections 23 and 24.

(3) The Minister may, after consultation with the MECs for local government and the Authority, determine priorities and reasonable timeframes for a determination or redetermination of municipal boundaries, but such priorities and timeframes must be concluded and communicated to the Authority at least three years before the earliest possible date for the next local government elections. 50

(4) The Board may make no determination or redetermination of municipal boundaries after the Minister has published the formula for councillors in terms of section 20 of the Municipal Structures Act. 55

### **Notification of intention to consider request for determination or redetermination of municipal boundary**

- 27.** (1) Before the Authority considers any proposed determination or redetermination of a municipal boundary, it must publish a notice in the area concerned—
- (a) stating the Authority's intention to consider the matter; and
  - (b) inviting written representations and views from the public within a specified period, which may not be less than 30 days.
- (2) The Authority must publish a notice in a newspaper circulating in the affected area.
- (3) When the Authority publishes a notice, it must convey by any appropriate means of communication the message contained in the notice.
- (4) The Authority must send by registered post, electronic mail or by hand a copy of the notice to—
- (a) the Minister;
  - (b) the MEC for local government in the province concerned;
  - (c) each municipality that will be affected by the Board's consideration of the matter;
  - (d) organised local government in the province concerned;
  - (e) the magistrate concerned if any magisterial district is affected;
  - (f) the traditional and Khoi-San leadership structures concerned if the area of jurisdiction of such structures is affected;
  - (g) the local houses of traditional and Khoi-San leaders concerned if the area of jurisdiction of local houses of traditional and Khoi-San leaders is affected;
  - (h) the provincial house concerned if the area of jurisdiction of traditional leadership structures is affected; and
  - (i) the National House if the area of jurisdiction of traditional leadership structures is affected,
- inviting written representations and views on the matter to be submitted to the Authority in the form and manner specified in the notice.
- (5) When the period for written representations and views has expired, the Board—
- (a) must consider all representations and views submitted to it; and
  - (b) may, after complying with sections 28, 29 and 30, take a decision on the determination or redetermination of municipal boundaries.

### **Conducting investigations on determination or redetermination of municipal boundary**

- 28.** (1) After receiving representations and views as contemplated in sections 27(1)(b) and 27(4), the Board must institute an investigation on any proposed determination or redetermination of a municipal boundary, unless—
- (a) in the opinion of the Board, proposing a determination or redetermination of a municipal boundary that does not affect the representation of voters in the municipality or an application that can be dealt with in terms of a research, study or investigation already conducted by the Board in a period not longer than 18 months before the current application was lodged, or
  - (b) a proposed determination or redetermination of a municipal boundary that is in compliance with a provincial boundary change following a constitutional amendment.
- (2) The Board may—
- (a) conduct the investigation itself; or
  - (b) designate one or more members of the Board who are experts in the subject under investigation to conduct such investigation; or
  - (c) appoint an investigating committee that—
    - (i) consists of not more than three persons who are subject matter experts with suitable qualifications and experience; and
    - (ii) must, for the purposes of determining or redetermining a municipal boundary, investigate the feasibility of the proposed determination or redetermination of a municipal boundary guided by the criteria.
- (3) For the purposes of the investigation, the Board, designated members of the Board or an investigating committee, may—
- (a) by written notice, summon a person who in its opinion has information which is material to the investigation to appear in person and—



- (i) give evidence; or
    - (ii) produce a document available to that person as specified in the summons;
  - (b) call a person present at the proceedings, whether summoned or not, to—
    - (i) give evidence; or
    - (ii) produce a document in that person's custody; 5
  - (c) administer an oath or solemn affirmation;
  - (d) question that person; and
  - (e) retain for a reasonable period a document produced in terms of paragraph (a)(ii) or (b)(ii).
- (4) A person summoned to the proceedings in terms of subsection (3)(a) may be 10  
represented by a legal practitioner if he or she so prefers.
- (5) The chairperson of the investigating committee must determine the procedure to  
be followed during an investigation by that committee.
- (6) On conclusion of the investigation by either designated members of the Board or  
an investigating committee, as the case may be, a report must be submitted to the Board 15  
for consideration.
- (7) The Board must consider the report and decide either to refer the matter for further  
investigation or to endorse it.
- (8) In an instance where the report is endorsed, it must be— 20
- (a) published on the official website of the Authority;
  - (b) published in a newspaper circulating in the affected area or through another  
media platform accessible to people living in the affected area; and
  - (c) broadcast on a radio station operating in the affected area,
- to allow members of the public to read the report and prepare for the public consultative 25  
meetings.

### **Part 3**

#### ***Public participation for determination or redetermination of municipal boundary***

#### **Public consultation for determination or redetermination of municipal boundary**

- 29.** (1) Public consultation with members of the public affected by the proposal for  
determination or redetermination of a municipal boundary must take place before a 30  
request is submitted in terms of section 26(2)(b), (c) or (d).
- (2) A public consultative meeting for determination or redetermination of a municipal  
boundary must be conducted by the Authority.
- (3) The Authority must publish a notice in a newspaper circulating in the area  
concerned or through another media platform accessible to people living in the area 35  
concerned, inviting members of the public to attend a public consultative meeting,  
specifying the purpose, date, time and venue for such meeting.
- (4) When the Authority publishes a notice as provided for in subsection (3) it must  
convey the message through any appropriate means of communication.
- (5) The date of the public consultative meeting may not take place within two weeks 40  
following the release of the report to allow members of the public time to access the  
report.
- (6) The contents of the report provided for in section 28(7) must be conveyed to the  
local community by—
- (a) displaying the documents at the affected municipality's head and satellite 45  
offices and libraries;
  - (b) displaying the documents on the Authority's official website; and
  - (c) notifying the local community of the place, including the website address,  
where detailed particulars concerning the documents can be obtained.
- (7) When the Authority invites the local community to submit written representations 50  
and views on the proposed determination or redetermination of a municipal boundary, it  
must be stated in the notice that any person who—
- (a) cannot write may come during office hours to a place where a staff member of  
the municipality or Authority, named in the invitation, will assist that person  
to transcribe that person's representations and views; or 55
  - (b) is deaf may come to the venue of the public meeting where a sign language  
interpreter will assist that person to participate in the proceedings.
- (8) At the public consultative meeting a representative of the Authority must—
- (a) explain the purpose and procedure for the public consultative meeting, and the  
determination or redetermination of a municipal boundary process; 60

- (b) provide a summary of the investigation report and any options open to the Authority;
  - (c) allow any person present at the public consultative meeting to make oral representations on his or her proposal for the determination or redetermination of a municipal boundary; 5
  - (d) allow members of the public to deliberate on the issues raised under paragraphs (b) and (c) or provide more information on the issue under consideration; and
  - (e) respond to relevant questions.
- (9) Affected municipalities may identify and provide suitable and secure venues or locations that are accessible to the majority of the affected communities, if they are able and can afford to do so. 10
- (10) The Board or a committee established by the Board in terms of sections 16(2) or 27 may, after public consultations are held, conduct public hearings, and may for this purpose— 15
- (a) issue a written summons to a person who in its opinion has information which is material to the investigation to appear before the Board or a committee established by the Board to—
    - (i) give evidence; or
    - (ii) produce a document available to that person and specified in the summons; 20
  - (b) administer an oath or solemn affirmation to that person;
  - (c) question that person, or have such a person questioned by a person designated by the Board or a committee established by the Board; and
  - (e) retain for a reasonable period a document produced in terms of paragraph (a)(ii). 25
- (11) The Board or a committee established by the Board may consult any other interested parties during the consultation process.

### **Mechanisms, processes and procedures for public participation**

- 30.** (1) Participation by the members of the public in the demarcation processes of the Authority may take place through— 30
- (a) government, political, civil and other organised community-based structures that represent communities who may be affected by the demarcation processes;
  - (b) mechanisms, processes and procedures through which citizens participate in the affairs of a municipality; 35
  - (c) other appropriate mechanisms, processes and procedures established by the Authority; and
  - (d) generally applying the provisions for participation guided by other legislation that promote transparency and administrative justice. 40
- (2) The Authority may establish appropriate mechanisms, processes and procedures as stipulated in section 17 of the Municipal Systems Act to enable members of the public to participate in the demarcation processes of the Authority.
- (3) When establishing mechanisms, processes and procedures, the Authority may take into account the needs of any persons affected by the demarcation processes. 45
- (4) When conducting public consultation, the Authority may make use of virtual platforms to enable members of the local community and other stakeholders to participate in the demarcation processes.

### **Publication of and objection to determination or redetermination of municipal boundary** 50

- 31.** (1) The Authority must publish its decision for determination or redetermination of a municipal boundary in the *Gazette* of the relevant province after complying with sections 27, 28 and 29.
- (2) Any person aggrieved by the decision may within 30 days of publication submit objections in writing to the Authority, and the Board must— 55
- (a) consider the objections;
  - (b) confirm, vary or withdraw its decision; and
  - (c) publish its decision in terms of paragraph (b) in the *Gazette* of the relevant province.



(3) The Board must provide reasons for the decisions referred to in subsection (2)(b) to those persons who submitted objections or to any member of the public who may request such reasons by way of publication on the Authority's website or through any other appropriate means.

#### **When determination or redetermination of municipal boundary takes effect** 5

**32.** (1) After the Board has considered any objections in terms of section 31(2), the Authority must without delay send particulars of the final decision on the determination or redetermination of a municipal boundary to the Electoral Commission.

(2) If the Electoral Commission is of the view that the final decision referred to in subsection (1) will— 10

(a) affect the representation of voters in the council of any of the municipalities affected, the determination or redetermination of a municipal boundary takes effect from the date of the next election in the area concerned; or

(b) not affect the representation of voters in such council, the determination or redetermination of a municipal boundary takes effect from a date determined 15 by notice in the *Gazette* of the relevant province, by the MEC for local government.

(3) (a) The Electoral Commission, within 60 days after having received the particulars referred to in subsection (1), must make known its view as envisaged in subsection (2) by notice in the *Gazette* of the relevant province. 20

(b) The MEC for local government concerned must publish the notice referred to in subsection (2)(b) within three months of the date of the notice published by the Electoral Commission in terms of paragraph (a), and send a copy of the notice to the Authority.

(4) (a) A determination or redetermination of a municipal boundary referred to in subsection (2)(b) will take effect on the date of commencement of the municipal 25 financial year following the date of publication of the notice affecting such determination or redetermination.

(b) The Authority must, at least nine months prior to the commencement of the municipal financial year in which a determination or redetermination of a municipal boundary is to take effect, inform the Minister and the Minister of Finance of such 30 determination or redetermination.

(c) The Minister of Finance may, in exceptional cases, including those referred to in section 87 of the Municipal Structures Act, decide on a different or shorter period than the period referred to in paragraphs (a) and (b).

#### **Part 4** 35

#### ***Delimitation of wards***

##### **Delimitation of ward process**

**33.** (1) After the Minister has published the formula for councillors in terms of section 20 of the Municipal Structures Act, the Authority must for purposes of an election, after consultation with the Electoral Commission, delimit metropolitan municipalities and 40 local municipalities into wards.

(2) When the Minister has published the formula for councillors as set out in subsection (1), the Authority must—

(a) compile a delimitation of wards timetable; and

(b) publish the delimitation of wards timetable in the *Gazette*. 45

(3) The Authority may, by notice as required in subsection (2)(b), amend the delimitation of wards timetable on good cause shown.

(4) A person to whom the delimitation of wards timetable applies, must comply with all its requirements, including timeframes.

##### **Number of wards** 50

**34.** The number of wards in a metropolitan or local municipality must be equal to the number of ward councillors determined for the municipality in terms of section 22(2) of the Municipal Structures Act.

### Criteria for delimitation of wards

- 35.** (1) The Board must delimit a municipality into wards, taking into account the following criteria:
- (a) The number of registered voters in each ward may not vary by more than 15 per cent from the norm, where the norm is determined by dividing the total number of registered voters on the municipality's segment of the national common voters roll by the number of wards in the municipality; 5
  - (b) the need to take into consideration—
    - (i) communication and accessibility; 10
    - (ii) density of population; and
    - (iii) topography and physical characteristics; and
  - (c) identifiable ward boundaries.
- (2) The Board may not deviate by more than 30 per cent from the norm, in instances where—
- (a) there is a need to avoid as far as possible the fragmentation of a continuous built-up settlement area, provided that such a settlement can be included wholly in one ward; 15
  - (b) the voting station at which the voters residing in that portion of land was to be outside of the ward; or
  - (c) there is a need to align the ward boundary to an identifiable topographic and physical feature such as a road, river, mountain range or proclaimed traditional council area: Provided that, if there is a continuous built-up settlement area, such an area will be included wholly in one ward. 20
- (3) If the Board intends to deviate as contemplated in subsection (2), the Authority must first publish such intention in the *Gazette*, for comment from members of the public and interested parties. 25

### Public participation in delimitation of wards

- 36.** (1) Public consultation in delimitation of wards must be conducted by the Authority.
- (2) The Authority must publish a notice in a newspaper circulating in the area concerned or through another media platform accessible to people living in the area concerned, inviting members of the public to attend a public consultative meeting, specifying the purpose, date, time and venue for such meeting. 30
- (3) The date of the public consultative meeting may not take place within two weeks from the date of the publication of the notice referred to in subsection (2). 35
- (4) When the Authority publishes the notice, it must be stated in the notice that any person who—
- (a) cannot write may come during office hours to a place where a staff member of the municipality or Authority, named in the invitation, will assist that person to transcribe that person's representations and views; or 40
  - (b) is deaf may come to the venue of the public meeting where a sign language interpreter will assist that person to participate in the proceedings.
- (5) At the public consultation meeting a representative of the Authority must—
- (a) explain the purpose and procedure for the public consultative meeting, and the delimitation of wards process; 45
  - (b) allow any person present at the public consultative meeting to make oral representations;
  - (c) allow members of the public to deliberate on the issues raised under paragraph (b) or provide more information on the issue under consideration; and
  - (d) respond to relevant questions. 50
- (6) The Board or a committee established by the Board in terms of section 16(2) may, after public consultations are held, conduct public hearings and may for this purpose—
- (a) issue a written summons to a person who in its opinion has information which is material to the delimitation of such wards to appear before the Board or a committee established by the Board to— 55
    - (i) give evidence; or
    - (ii) produce a document available to that person and specified in the summons;
  - (b) administer an oath or solemn affirmation to that person;

- (c) question that person or have such a person questioned by a person designated by the Board or a committee established by the Board; and
  - (d) retain for a reasonable period a document produced in terms of paragraph (a)(ii).
- (7) The Board or a committee established by the Board may consult any other interested parties during the public consultation process. 5

### **Publication of and objection to delimitation of wards**

37. (1) The Authority must publish the decision for the delimitation of wards for a municipality in the *Gazette* of the relevant province.
- (2) Any person aggrieved by a decision referred to in subsection (1) may within 30 days of publication submit objections in writing to the Authority, and the Board must— 10
- (a) consider the objections;
  - (b) confirm, vary or withdraw the decision; and
  - (c) publish the final delimitation decision in the *Gazette* of the relevant province.
- (3) The Board must provide reasons for the decisions referred to in subsection (2)(c) to any person who submitted objections or to any member of the public who may request such reasons by way of publication on the Authority's website or through any other appropriate means. 15

## **Part 5**

### ***Appeals Authority*** 20

#### **Establishment and constitution of Appeals Authority**

38. (1) There is hereby established a body to be known as the Demarcation Appeals Authority which—
- (a) has jurisdiction throughout the Republic;
  - (b) is a juristic person; 25
  - (c) is an Appeals Authority of record; and
  - (d) must exercise its functions in accordance with this Act.
- (2) The Appeals Authority consists of a Chairperson and not less than three, but not more than 10, other members appointed by the President, on a part-time basis and on the recommendation of the Minister, from among persons nominated in response to a public call for nominations. 30
- (3) The President must—
- (a) appoint the Chairperson and other members of the Appeals Authority; and
  - (b) appoint a person to fill any vacancy on the Appeals Authority.

#### **Functions of Appeals Authority** 35

39. (1) The Appeals Authority may in respect of any decision of the Board referred to it by a person aggrieved by that decision—
- (a) adjudicate on any dispute arising from the final demarcation decision of the Board, to determine the merits of the dispute, and, if necessary, to impose any remedy provided for in this Act, including referring the decision to the Board for reconsideration as contemplated in section 43(5); 40
  - (b) make any ruling or order necessary or incidental to the performance of its functions in terms of this Act, including setting aside the decision of the Board.
- (2) The Minister, after consultation with the Authority and by notice in the *Gazette*, must prescribe regulations for matters relating to the functions of the Appeals Authority referred to in subsection (1), including— 45
- (a) forms;
  - (b) time periods;
  - (c) information required; 50
  - (d) additional definitions;
  - (e) filing fees;
  - (f) access to confidential information;
  - (g) manner and form of participation in appeals procedures; and
  - (h) any other applicable procedures. 55

### Qualifications of members of Appeals Authority

- 40.** (1) The Chairperson and other members of the Appeals Authority, collectively, must—
- (a) represent a broad cross-section of the population of the Republic;
  - (b) have proven experience in demarcation issues; and
- comprise sufficient persons with legal training and experience. 5
- (2) Each member of the Appeals Authority must—
- (a) be a South African citizen, residing in South Africa; and
  - (b) have suitable qualifications and experience in economics, law, commerce, local government, demarcation or public affairs. 10
- (3) A person shall not be a member of the Appeals Authority if that person is—
- (a) the holder of a political office, whether in a permanent, temporary or acting capacity;
  - (b) a full-time employee of an organ of state;
  - (c) an elected political representative in any sphere of government; 15
  - (d) an unrehabilitated insolvent;
  - (e) subject to an order of a competent court holding that person to be mentally unfit or disordered; or
  - (f) a person convicted of an offence and sentenced to imprisonment without the option of a fine for a period of not less than 12 months. 20

### Term of office of members of Appeals Authority

- 41.** (1)(a) Subject to subsection (2), the Chairperson and each member of the Appeals Authority may serve for a term not exceeding five years.
- (b) The term of office of a member of the Appeals Authority starts from the date of appointment of the member as determined by the President. 25
- (2) The President may reappoint a member of the Appeals Authority at the expiry of the member's term of office: Provided that a member may not serve more than two consecutive terms.
- (3) The Chairperson, may after a period of three months give written notice to the Minister, to resign— 30
- (a) from the Appeals Authority; or
  - (b) as Chairperson, and may remain a member of the Appeals Authority.
- (4) A member of the Appeals Authority other than the Chairperson may resign by giving at least three months' written notice to the Minister, but the Minister may accept a shorter period in a specific case. 35
- (5) The President, on the recommendation of the Minister—
- (a) must remove the Chairperson or any other member of the Appeals Authority from office if that person becomes subject to any of the disqualifications referred to in section 40(3); or
  - (b) subject to the Promotion of Administrative Justice Act, may remove the 40
- Chairperson or a member of the Appeals Authority from office—
- (i) for misconduct;
  - (ii) on account of incapacity;
  - (iii) on account of continued ill-health;
  - (iv) if he or she is no longer a fit and proper person to hold the office; 45
  - (v) on account of a loss of confidence in the Chairperson; or
  - (vi) for engaging in any activity that may undermine the integrity of the Appeals Authority.

### Chairperson and deputy chairperson of Appeals Authority

- 42.** (1) The President must, on the recommendation of the Minister, designate two 50
- members of the Appeals Authority as the Chairperson and deputy chairperson, respectively.
- (2) The Chairperson is the convenor of the Appeals Authority.
- (3) The deputy chairperson shall perform the functions of Chairperson whenever the— 55
- (a) office of Chairperson is vacant; or
  - (b) Chairperson is for any other reason temporarily unable to perform the functions of Chairperson.

### Appeals Authority proceedings

- 43.** (1) Any person aggrieved by a decision of the Board that was published in terms of section 31(2)(c) may lodge an appeal against that decision with the Appeals Authority no later than 30 days from the date of the publication of that decision.
- (2) The Chairperson is responsible for managing the caseload of the Appeals Authority and must assign each matter referred to the Appeals Authority to a panel comprised of any three members of the Appeals Authority. 5
- (3) When assigning a matter in terms of subsection (1), the Chairperson must—
- (a) ensure that at least one member of the panel is a person who has legal training and experience; and 10
  - (b) designate a member of the panel to preside over the panel's proceedings.
- (4) Where a member of the panel is unable to complete proceedings on a matter because of their disqualification in terms of section 40(3), resignation, illness or death, the Chairperson must—
- (a) direct that the hearing of that matter proceed before any remaining members of the panel subject to the requirements of subsection (3)(a); or 15
  - (b) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.
- (5) The panel must consider the appeal and confirm or refer the determination to the Board for reconsideration within 30 days from the date on which the appeal was lodged. 20
- (6) The decision of the panel referred to in subsection (5) and the reasons therefor must be in writing.
- (7) A decision of the Chairperson, the Board or a panel as contemplated in this section is the decision of the Appeals Authority. 25

### Conflict and disclosure of interest by members of Appeals Authority

- 44.** (1) A member of the Appeals Authority may not represent any person before a panel of the Appeals Authority.
- (2) If, during a hearing, it appears to a member of the Appeals Authority that a matter concerns a financial or other interest of that member, that member must— 30
- (a) immediately make a full disclosure of the fact and nature of that interest to the Chairperson and to the presiding members at that hearing; and
  - (b) withdraw from any further involvement in that hearing.

### Service by member of Appeals Authority after expiry of term of office

- 45.** A member is deemed to be a member of the Appeals Authority after the expiry of his or her term of office only for the purpose and duration of finalising any pending matters to which the Chairperson is of the view that such member must continue to be a part of such panel. 35

### Remuneration and benefits of members of Appeals Authority

- 46.** (1) The conditions of service, remuneration, allowances and other benefits of members of the Appeals Authority must from time to time be determined by the Minister, by notice in the *Gazette*, after consultation with the Minister of Finance. 40
- (2) The Minister may determine any other conditions of appointment not provided for in this section.

## CHAPTER 4

45

### MUNICIPAL CAPACITY ASSESSMENTS

#### Municipal capacity assessments

- 47.** (1) The Authority must conduct municipal capacity assessments to—
- (a) support its decisions on the determination and redetermination of municipal boundaries; 50
  - (b) provide assistance and guidance to the Minister and the MEC for local government regarding the functions and powers assigned by the Minister or

- MEC for local government to a municipality through authorisation, revocation or adjustment as contemplated in the Municipal Structures Act; and
- (c) render an advisory service in respect of matters provided for in this Act and other relevant legislation.
- (2)(a) The Authority must conduct at least one municipal capacity assessment in respect of each municipality during the term of the Municipal Council for the respective municipality. 5
- (b) The municipal capacity assessment must be completed at least six months before the end of the term of the Municipal Council.
- (c) The Authority may, subject to available resources, conduct a mid-term municipal capacity assessment, which should be initiated after 24 months of the commencement of the term of a Municipal Council and must be completed no later than 30 months after the commencement of the term of the Municipal Council. 10
- (3) When the Authority conducts a municipal capacity assessment, it must also take into account the provisions of sections 9 and 10 of the Municipal Systems Act, Chapter 5 of the Municipal Structures Act and the following factors: 15
- (a) Operational, administrative and financial management capacity;
- (b) infrastructure that enables a municipality to collect revenue and to govern on its own initiative the local government affairs of its community;
- (c) natural resources; 20
- (d) any other drivers of economic growth;
- (e) any other factors considered by the Minister and the MEC for local government in the assignment of powers and functions in accordance with the Structures Act; and
- (f) social cohesion. 25
- (4) A municipality that is requested by the Authority to submit any information required for purposes of municipal capacity assessments must submit such information in the form and manner specified in the request.

## CHAPTER 5

### MISCELLANEOUS 30

#### Regulations and guidelines

48. The Minister may by notice in the *Gazette*, and after consultation with the Authority, make regulations or issue guidelines consistent with this Act concerning any matter that—
- (a) must be prescribed in terms of this Act; or 35
- (b) is referred to in this Act which in the opinion of the Minister is necessary or expedient for the effective carrying out or furtherance of the provisions and objects of this Act.
- (c) The Minister must submit regulations to be made to Parliament for parliamentary scrutiny at least 30 days before their promulgation. 40

#### Offences and penalties

49. A person who—
- (a) does not attend any public hearing when summoned to do so;
- (b) does not produce the documents as requested in the summons;
- (c) does anything intended to improperly influence the Authority, the Board or a committee established by the Board in its consideration of a matter, 45
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

#### Amendment of laws

50. The laws mentioned in the Schedule are amended to the extent indicated in the third column of the Schedule. 50

### **Transitional arrangements**

**51.** (1) Any matter contemplated in section 5 which has commenced and is currently being dealt with by the Demarcation Board shall continue to be dealt with in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998).

(2) The Demarcation Board, at the date of commencement of this Act, remains competent to function as the Board until the newly appointed Board contemplated under section 10 is appointed. 5

(3) The members of the Demarcation Board who were appointed before this Act took effect, must be regarded as having been appointed in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998). 10

### **Short title and commencement**

**52.** This Act is called the Independent Municipal Demarcation Authority Act, 2022, and takes effect on a date determined by the President by proclamation in the *Gazette*.

**SCHEDULE**  
**LAWS AMENDED**  
(Section 50)

No. and year of law	Short title	Extent of application
Act No. 117 of 1998	Local Government: Municipal Structures Act, 1998	1. The deletion of sections 2, 3 and 4. 2. The deletion in Schedule 1 of Items (2), (3), (4) and (5).
Act No. 27 of 1998	Local Government: Municipal Demarcation Act, 1998	3. Repeal of the whole.



## **MEMORANDUM ON THE OBJECTS OF THE INDEPENDENT MUNICIPAL DEMARCATION AUTHORITY BILL, 2022**

### **1. BACKGROUND**

- 1.1 The Independent Municipal Demarcation Authority Bill, 2022 (the “Bill”), seeks to repeal and replace the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998) (hereinafter referred to as the “Act”), so as to align and update the legislation with current Demarcation Board practices.
- 1.2 In summation, the Bill seeks to—
  - (a) rename the Municipal Demarcation Board so that the organisation is referred to as the Independent Municipal Demarcation Authority (the “Authority”);
  - (b) provide that the Chief Executive Officer is the accounting officer and that the Chairperson is the executive authority for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“Public Finance Management Act”);
  - (c) provide that the Board members, in addition to the current criteria, have to possess appropriate knowledge of or experience in information technology;
  - (d) provide that the selection panel, for the appointment of members to the Board, includes a representative from the National Assembly and from the National House of Traditional and Khoi-San Leaders in addition to the current composition of the selection panel members;
  - (e) provide that vacancies which arise on the Board may be filled by persons that were on the initial “list” that was submitted to the President, at the time of the establishment of the Board;
  - (f) clarify that the term of office of members of the Board is five years, calculated from the date of appointment by the President, but may not exceed a period ending six months into the commencement of the term of the Municipal Councils, after which the Board members are appointed;
  - (g) ensure that all Board members serve on a part-time basis, except for the Chairperson, who may serve in either a full-time or part-time basis;
  - (h) ensure that major demarcation, which affects the movement of more than one whole ward in a municipality, may be done only after every 10 years;
  - (i) deviate from the present norm of 15% to 30%, when delimiting wards, but within strict conditions to avoid the splitting of communities;
  - (j) provide for the establishment of the Demarcation Appeals Authority to deal with appeals;
  - (k) provide for more extensive public participation and stakeholder consultation for any demarcation or delimitation;
  - (l) set timeframes for boundary redeterminations and ward delimitation after considering the programme of the Independent Electoral Commission (“IEC”);
  - (m) require the Authority to undertake municipal capacity assessments; and
  - (n) migrate the functions of the current Municipal Demarcation Board as contained in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (“Municipal Structures Act”), to ensure that such functions are provided for in this Bill.
- 1.3 Repealing the current Act and drafting a new Bill afresh was required after a consideration of the extensive inputs from the Demarcation Board and other stakeholders, the substantive nature of the proposed amendments and the possible restructuring of the current Act.

### **2. OBJECTS OF BILL**

- 2.1 The Bill is divided into five Chapters and a schedule, with other chapters subdivided into several Parts.

## 2.2 Chapter 1

- 2.2.1 **Clause 1** provides for the definitions to facilitate the interpretation of the new Act.
- 2.2.2 **Clause 2** provides for the purpose of the Bill which is to provide for the establishment of the Independent Municipal Demarcation Authority and set the criteria and procedures for determination or redetermination of municipal boundaries and delimitation of wards by the Authority.

## Chapter 2

### 2.3 Part 1

- 2.3.1 Chapter 2 deals with the establishment, status, functions and powers of the Authority. The salient features under Part 1 of Chapter 2 are:
  - (a) **Clause 3** provides for the establishment of the Authority in accordance with section 155(3)(b) of the Constitution of the Republic of South Africa i.e. National legislation must establish criteria and procedures for the determination of municipal boundaries by an independent authority. The Municipal Demarcation Board will now be known as the Independent Municipal Demarcation Authority consisting of a Board and the administration. The aim of this provision is to differentiate between the Board and the administration (including employees) since, currently, this is not clearly defined in the Act.
  - (b) **Clause 4** provides that the Authority is a constitutional institution that is listed under Schedule 1 of the Public Finance Management Act.
  - (c) **Clause 5** that provides for the functions of the Authority, which include the function of conducting municipal capacity assessments. The four major functions of the Authority are:
    - (i) Determination or redetermination of municipal boundaries in accordance with the criteria provided for in the Act, legislation enacted in terms of Chapter 7 of the Constitution, and any other applicable legislation;
    - (ii) delimitation for all municipalities that must have wards;
    - (iii) render an advisory service in respect of matters provided for in this Act and other appropriate legislation; and
    - (iv) conduct municipal capacity assessments.
- 2.3.2 **Clause 6** provides for the powers of the Authority. Various powers are conferred on the Authority, to do all that is necessary or expedient to perform effectively its functions, including that the Authority may determine its own staff establishment and appoint employees, as well as deal with other operational matters relating to the functioning of the Authority.

## Chapter 2

### 2.4 Part 2

- 2.4.1 **Clause 7** specifies that the Board will consist of no fewer than seven and no more than 10 members appointed by the President. The composition of the Board must also reflect the broad composition of South African society and must collectively represent a pool of knowledge concerning issues relevant to demarcation.
- 2.4.2 **Clause 8** provides for the responsibilities of the Board. The business and affairs of the Authority must be managed by the Board. The Board is responsible for the corporate governance of the Authority and may exercise any other power and perform any other functions that the Board is authorised to do in terms of the Act or other legislation.

- 2.4.3 **Clause 9** provides for the requisite qualifications that a person must possess to be appointed to the Board. The requisite qualifications, experience or knowledge in relation to information technology is now required among the Board members. This is necessary given that the work of the Authority is generally technical in nature, and it utilises information and communication technologies extensively for determination and delimitation. The prevalence of such skills within the Board will enhance decision-making. In addition, the holder of a political office in relation to a political party or structure thereof is not eligible to become a member of the Board. However, employees in the service of an organ of state may be a member of a committee and may also be seconded to the Authority.
- 2.4.4 **Clause 10** provides for the appointment of Board members. The Minister must invite suitable persons to apply for appointment to the Board, by notice, in the *Gazette* and in an advertisement in a national newspaper. After consultation with the President, the Minister must establish a selection panel to appoint members of the Board. The selection panel has been expanded to include the Chairperson of the Portfolio Committee responsible for local government (or a designee), and the Chairperson of the National House of Traditional and Khoi-San Leaders. When a vacancy arises in the Board, the Minister must, within 30 days of receiving the Board's written notification of the vacancy, recommend to the President to fill the vacancy from the additional names that were submitted by the Minister when the Board was being established, or initiate the process of establishing a panel if none of the additional names are available to fill the vacancy.
- 2.4.5 **Clause 11** provides for the term of office, termination and resignation of Board members. The term of office for a member of the Board is five years, calculated from the date of appointment by the President. However, the term of the Board must end before a period of six months expires after the commencement of a new term of the Municipal Councils. This is to ensure that an appointed Board is responsible for the entire process for demarcation, as well as delimitation within municipalities in preparation for a general election of all municipal councils. A member of the Board may not hold office for more than two consecutive terms and ceases to be a member if he or she is absent from three Board meetings without being granted leave of absence by the Chairperson. Members of the Board will be appointed on a part-time basis, except for the Chairperson who may be appointed on either a full-time or part-time basis.
- 2.4.6 **Clause 12** provides for the conditions of appointment of the Board members. The conditions of appointment must be finalised by the Minister with the concurrence of the Minister of Finance.
- 2.4.7 **Clause 13** provides for the appointment of the Chairperson and deputy chairperson, with specific reference to the Chairperson being the executive authority for the purposes of the Public Finance Management Act. This promotes the principle that the Authority, as a constitutional institution, is independent and impartial.
- 2.4.8 **Clause 14** provides for meetings. The Chairperson convenes a Board meeting and must also do so at the request of the majority of the Board members. This clause also provides that the Chairperson has a casting vote when there is an equal number of votes cast for and against a decision.
- 2.4.9 **Clause 15** provides that the Board must determine rules of procedure for conducting meetings and must keep minutes of the proceedings and decisions. The Board may make rules regarding ancillary or

incidental administrative or procedural matters that are necessary for the proper performance of the functions of the Board.

- 2.4.10 **Clause 16** provides for the establishment of committees. The Board must establish the Audit and Risk Governance Committee, and the Remuneration and Performance Committee. Provision is also made for the establishment and composition of other committees to assist the Board in performing its functions.
- 2.4.11 **Clause 17** provides for the delegation of and instruction to exercise powers and perform functions of the Board. The Board may delegate any of its powers or functions to a member, employee or committee of the Board, excluding the power to make a final decision on demarcation or delimitation. The Board may also confirm, vary or revoke any decision taken by a member of the Board, committee or employee, in consequence of a delegation or instruction.
- 2.4.12 **Clause 18** provides for the conduct of Board members. This clause requires Board members to perform their functions in good faith and without fear, favour or prejudice, and must disclose all personal or private business interests. A Board member may not use his or her position or privileges for private gain, and may not compromise the credibility, impartiality, independence and integrity of the Board. A Board member who contravenes or fails to comply with the above will be guilty of misconduct and may be removed from office.

## Chapter 2

### 2.5 Part 3

- 2.5.1 Part 3 provides for the administration and staffing matters relating to the appointment of the Chief Executive Officer, conditions of employment for employees and contracting for services.
- 2.5.2 **Clause 19** provides for matters relating to the Chief Executive Officer. The Chief Executive Officer is the head of the administration of the Authority, for a period not exceeding five years. The term may be renewed only once for the same or a shorter period, subject to the terms and conditions determined by the Board. The Chief Executive Officer is also the accounting officer and must perform the functions, as may be assigned to her or him, by the Board.
- 2.5.3 **Clause 20** provides for conditions of employment. The Board determines the conditions of employment of employees, which must comply with the principles of public administration as contained in the Public Administration Management Act. Officials from other organs of state that are seconded to the administration of the Authority must perform their functions under the control and direction of the Chief Executive Officer.
- 2.5.4 **Clause 21** provides for contracting for services and stipulates that a person contracted to provide a service may be remunerated and reimbursed for expenditure incurred in terms of the Authority's policy and the written agreement between the Authority and that person.

## Chapter 2

### 2.6 Part 4

- 2.6.1 Part 4 provides for the finances of the Authority.
- 2.6.2 **Clause 22** provides that the Authority will receive funding from Parliament, or from any other source, through the National Revenue

Fund, and must refund any monies that have not been utilised by the end of a financial year, unless there is an agreement by Minister acting with the concurrence of the Minister of Finance to act otherwise.

## Chapter 3

### 2.7 Part 1

2.7.1 Chapter 3 provides for matters relating to demarcation, and Part 1 provides for the determination or redetermination criteria.

2.7.2 **Clause 23** provides for the determination or redetermination objectives. The Authority must demarcate municipal boundaries in accordance with the objects of local government as set out in section 152 of the Constitution, but must also—

- (a) ensure that the areas established enable effective local governance and integrated development; and
- (b) have a tax base as inclusive as possible of users of municipal services.

The Authority must also consider the municipality's capacity to execute any other function in line with a Minister's or an MEC's allocated powers and functions when demarcating a municipal boundary. The Authority must also endeavour to attain the principles contained in the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013).

2.7.3 **Clause 24** provides for the factors that must be taken into account. The Authority must consider approximately 17 different factors when determining or redetermining a municipal boundary, including the following:

- (a) Common geo-statistical building blocks, which facilitate and support a standard geographical hierarchy;
- (b) relevant national development policies and plans, which might impact on the nature of local government and its boundaries;
- (c) relevant policies and legislation relating to the institutional or functional reorganisation of local government;
- (d) natural endowments, resources, assets, business investments and other drivers of economic growth; and
- (e) the views of the people and the communities living in the area.

2.7.4 **Clause 25** provides for the determination of a category of municipality and in essence migrates sections 2, 3 and 4 of the Municipal Structures Act into the Bill. These sections in the Municipal Structures Act deal with the following matters:

- (a) Areas which must have category A municipalities;
- (b) areas which must have municipalities of both category C and B; and
- (c) application of criteria when determining category A, B or C municipalities.

## Chapter 3

### 2.8 Part 2

2.8.1 Part 2 provides for the determination or redetermination of a municipal boundary.

**Clause 26** provides for the initiation of determination or redetermination of a municipal boundary process. The Board will determine or redetermine a municipal boundary that affect more than one ward only after a period of 10 years. This will be done by the Authority or on request by stakeholders subject to clauses 23 and 24. The Minister

may determine priorities and timeframes for determination or redetermination of a municipal boundary after consultation with the Members of the Executive Council responsible for local government, but not later than three years before the earliest possible date for the next local government elections. The Board may not make any determination or redetermination of municipal boundaries after the Minister has published the formula for the determination of the number of councillors, in terms of section 20 of the Municipal Structures Act.

- 2.8.2 **Clause 27** provides for the notification of intention to consider a request for determination or redetermination of a municipal boundary. The Authority must publish a notice in a newspaper circulating in the area concerned stating its intention to consider a request for the determination or redetermination of a municipal boundary and will invite written representations and views from the public within a period not less than 30 days, before it considers any determination of a municipal boundary. A copy of the notice must also be sent to various stakeholders inviting written representations or views on the matter.
- 2.8.3 **Clause 28** provides for the conducting of investigations on determination and redetermination of a municipal boundary. After receiving inputs from stakeholders, the Board must institute an investigation (unless if it is a minor technical adjustment). This investigation may be undertaken by the Board, one or more members of the Board itself or an investigating committee. The investigation forum will have the power to summon persons and question such persons. A report must be submitted to the Board for consideration after the investigation is finalised. At this stage, the Board may either endorse the report or refer the matter for further investigation.

## Chapter 3

### 2.9 Part 3

- 2.9.1 Part 3 provides for public participation for the determination or redetermination of a municipal boundary.

**Clause 29** provides for public consultation for the determination or redetermination of a municipal boundary. A public participation process must be undertaken after an investigation is concluded, as follows:

- (a) The Authority must publish a notice informing the local community of a public meeting and communicate the same message through other means;
- (b) the report that was concluded by the investigating forum must be conveyed to the local community and written submissions must be invited;
- (c) the Authority must then present the report at the public meeting and respond to questions from attendees;
- (d) the affected municipalities may provide suitable facilities for the engagement with the communities; and
- (e) the Authority may conduct further public hearings after the initial public consultative engagements undertaken by the Authority.

- 2.9.2 **Clause 30** provides for mechanisms, processes and procedures for public participation. This clause requires that public participation may take place through appropriate structures that represent communities, and through means that maximise public participation, including the use of virtual platforms.
- 2.9.3 **Clause 31** provides for publication of and objection to determination or redetermination of a municipal boundary demarcation. The



Authority is required to publish its decision for determination or redetermination of a municipal boundary in the relevant *Gazette* for comments to be submitted within 30 days, and after considering any objections, the Board must confirm, vary or withdraw its decision by publishing the final decision in the *Gazette*. The Board must also provide reasons, under certain circumstances, for such demarcation by publishing reasons on the website or by any other platform.

- 2.9.4 **Clause 32** provides for when a determination or redetermination will take effect. The Authority must send particulars of the final decision on the determination or redetermination of a municipal boundary to the IEC and to the relevant Member of the Executive Council, for their views. The IEC and the relevant Member of the Executive Council must thereafter publish a notice in the relevant *Gazette*.

## Chapter 3

### 2.10 Part 4

- 2.10.1 Part 4 provides for the delimitation of wards.

**Clause 33** provides for a delimitation of wards process. The Authority must delimit metropolitan and local municipalities, after the Minister publishes the formulae for determining the number of councillors, into wards. The Authority must compile and publish a delimitation of wards timetable in the *Gazette* after the publication of the formula.

- 2.10.2 **Clause 34** provides for the number of wards. The number of wards must be equal to the number of ward councillors determined for the municipality in terms of section 22(2) of the Municipal Structures Act.

- 2.10.3 **Clause 35** provide for criteria for the delimitation of wards. The number of registered voters in each ward may not vary by more than 15% of the norm, i.e. where the norm is determined by dividing the total number of registered voters in a municipality by the number of wards in a municipality. The Board may deviate by not more than 30% of the norm in exceptional cases. In these instances, the Authority must first publish such intention in the *Gazette* for comment.

- 2.10.4 **Clause 36** provides for public participation in delimitation of wards.

- 2.10.5 **Clause 37** provides for the publication of and objection to delimitation of wards. The Authority must provide reasons for the final ward delimitation decision to those persons who may request such reasons. The Authority must confirm, vary or withdraw the decision and publish the final delimitation decision in the *Gazette*, after considering any objections that may have been received, and must simultaneously also provide reasons to those persons who submitted objections or to persons who request such reasons.

## Chapter 3

### 2.11 Part 5

- 2.11.1 Part 5 relates to the Demarcation Appeals Authority.

**Clauses 38 to 46** deal with the establishment of the Appeals Authority. The present legislation does not provide for an appeal mechanism or dispute resolution process in relation to decisions taken by the current Demarcation Board, except for aggrieved persons to approach the courts to review the decisions of the current Demarcation Board. The litigation process is expensive and time-consuming. Also, in most instances, communities resort to violent protests as they attempt to

register their dissatisfaction. The establishment of the Appeals Authority will allow stakeholders to be heard by a competent and independent authority.

- 2.11.2 **Clause 38** provides for the establishment and constitution of the Appeals Authority. This provision requires the President to appoint, on recommendation by the Minister, an Appeals Authority of not less than three but not more than 10 members, who will serve on a part-time basis.
- 2.11.3 **Clause 39** provides for the functions of the Appeals Authority. The Appeals Authority may adjudicate on disputes arising from the final demarcation decisions made by the Board, and if necessary, may impose any remedy. This clause also empowers the Minister to prescribe regulations for the functioning of the Appeals Authority.
- 2.11.4 **Clause 40** provides for the requisite qualifications for the appointment of members to the Appeals Authority. The Chairperson and other members must—
- (a) be South African citizens and represent a broad cross-section of the population of the Republic;
  - (b) have proven experience in demarcation issues; and
  - (c) comprise of sufficient persons with legal training and experience.
- 2.11.5 **Clause 41** provides for the term of office of members. Members of the Appeals Authority may serve a term not exceeding five years commencing from the date that they were appointed by the President.
- 2.11.6 **Clause 42** provides for the Chairperson and deputy chairperson of the Appeals Authority. The President must, on the recommendation of the Minister, designate one member as Chairperson and another member as deputy chairperson.
- 2.11.7 **Clause 43** provides for the Appeals Authority proceedings. Any person aggrieved by a demarcation decision of the Board has up to 30 days from the date of decision to lodge an appeal. The Chairperson must allocate such appeal to a panel of three members. The panel must consider the appeal and either confirm the determination or refer it back to the Board for consideration. This must be done within 30 days from the date that the appeal was lodged.
- 2.11.8 **Clause 44** provides for conflict and disclosure of interest by members of the Appeals Authority. A member of the Appeals Authority may not represent any person before a panel, and a member must immediately and fully disclose any interests in a specific matter.
- 2.11.9 **Clause 45** provides for service by members of the Appeals Authority after their term of office has expired. If a member's term expires while that member has not concluded a matter before him or her, then that member, must continue to consider such matter until it has been concluded.
- 2.11.10 **Clause 46** provides for the conditions of service, remuneration, allowances and other benefits of members of the Appeals Authority, which must from time to time be determined by the Minister, by notice in the *Gazette*, after consultation with the Minister of Finance.

## 2.12 Chapter 4

**Clause 47** provides for municipal capacity assessments. This clause requires the Authority to conduct municipal capacity assessments to support its decisions for demarcation and must also provide assistance and guidance, to the Minister and the respective Members of the Executive Council for local



government, regarding the assignment of functions and powers. The Authority must also conduct at least one municipal capacity assessment for all municipalities during the term of municipal councils. Subject to the availability of resources, the Authority may conduct a mid-term municipal capacity assessment. The Authority is also required to consider, amongst other things, the provisions in sections 9 and 10 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and Chapter 5 of the Municipal Structures Act. Municipalities will be required to submit any information that is required by the Authority to fulfil this obligation.

## 2.13 Chapter 5

2.13.1 Chapter 5 provides for miscellaneous matters.

**Clause 48** provides for regulations and guidelines. This clause provides for the Minister, after consultation with the Authority, to make regulations or issue guidelines on any matter that must be prescribed in terms of the Act.

2.13.2 **Clause 49** provides for offences and penalties. A person who does not comply with a summons or does not provide documents that are requested by the Authority, is guilty of an offence and may be fined or imprisoned.

2.13.3 **Clause 50** provides for the amendment of laws. The Act will be repealed in totality. Sections that migrated from the Municipal Structures Act will be deleted from that Act.

2.13.4 **Clause 51** provides for transitional arrangements. Any matter which is currently being dealt with by the Demarcation Board continues to be dealt with in terms of the Act. The Demarcation Board, at the date of commencement of this Act, remains competent to function as the Board until the newly appointed Board contemplated under section 7 is appointed. The members of the Demarcation Board who were appointed before this Act takes effect, must be regarded as having been appointed in terms of the Act.

2.13.5 **Clause 52** provides for the short title and commencement of this Act. It will be called the *Independent Municipal Demarcation Authority Act, 2022*, and will take effect on a date determined by the President by proclamation in the *Government Gazette*.

## 2.14 Schedule

The Schedule provides for the list of laws that will be amended or repealed.

## 3. PARTIES CONSULTED

The following stakeholders were consulted during the development of the Bill:

### 3.1 Sector Departments and Provinces

- (a) Department of Traditional Affairs;
- (b) Department of Agriculture, Rural Development and Land Reform;
- (c) Department of Human Settlements, Water and Sanitation;
- (d) Department of Tourism;
- (e) Department of Performance Monitoring and Evaluation;
- (f) Department of Transport;
- (g) Department of Justice and Constitutional Development;
- (h) Department of Home Affairs;
- (i) National House of Traditional and Khoi-San Leaders;
- (j) National Treasury;
- (k) The Presidency;
- (l) Provincial Departments responsible for local government;

- (m) South African Police Service; and
- (n) Statistics South Africa.

### 3.2 Organisations and Institutions

- (a) Independent Electoral Commission;
- (b) Municipal Demarcation Board;
- (c) South African Local Government Association; and
- (d) South African Cities Network.

## 4. FINANCIAL IMPLICATIONS FOR THE STATE

The Authority will be liable for the financial expenditure associated with its obligations in the Bill.

## 5. PARLIAMENTARY PROCEDURE

- 5.1 The Constitution distinguishes between four categories of Bills as follows: Bills amending the Constitution (section 74); Ordinary Bills not affecting provinces (section 75); Ordinary Bills affecting provinces (section 76); and Money Bills (section 77). A Bill must be correctly classified or tagged; otherwise it would be constitutionally invalid.
- 5.2 The Bill has been considered against the provisions of the Constitution relating to the tagging of Bills, and against the functional areas listed in Schedule 4<sup>1</sup> to the Constitution.
- 5.3 The Constitutional Court stated in the case of *Tongoane and Others v Minister of Agriculture and Land Affairs and Others* 2010 (8) BCLR 741 (CC), that the test for the tagging of Bills essentially entails that "any Bill whose provisions in substantial measure" affects the provinces must be classified to follow the section 76 procedure.
- 5.4 The Constitutional Court thus held that the test for tagging must be informed by its purpose. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how a Bill must be considered by the provinces and in the NCOP. The question of how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content. Ngcobo CJ, at paragraphs 69 and 70, concisely dealt with the tagging question as follows:

"The tagging of Bills before Parliament must be informed by the need to ensure that provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affects them. Paying less attention to the provisions of a Bill once its substance, or purpose and effect, has been identified undermines the role that provinces should play in the enactment of national legislation affecting them.

To apply the "pith and substance" test to the tagging question, therefore undermines the constitutional role of the provinces in legislation in which they should have a meaningful say, and disregards the breadth of the legislative provisions that section 76(3) requires to be enacted in accordance with the section 76 procedure." (Our emphasis.)

- 5.5 As indicated in the *Tongoane* judgment "any Bill whose provisions in substantial measure" falls within a function listed in Schedule 4 to the

---

1. Functional areas of concurrent national and provincial legislative competence

Constitution must be classified as a section 76 Bill. The question that needs to be asked therefore is whether the provisions of the Bill, in substantial measure, fall within a functional areas listed in schedule 4 to the Constitution, or whether the Bill provides for legislation envisaged in section 76(3)(a)-(f) of the Constitution. In order to determine this, focus should be on all the provisions of the Bill in order to establish the extent to which they substantially affect functional areas listed in Schedule 4 and not on whether any of its provisions are incidental to its substance. It is thus necessary to examine all the provisions of the Bill as a whole to determine the extent to which they substantially affect any of the matters listed in Schedule 4.

- 5.6 In the light of the above, we are of the view that the purpose of the Bill is related to the establishment of the Authority and Appeals Authority specifically demarcation of municipal boundaries delimitation of municipal wards. Section 155(3)(b) of the Constitution provides that national legislation must establish criteria and procedures for the determination of municipal boundaries by an independent authority.
- 5.7 The purpose and effect of the Bill is to provide for the criteria and procedures for the determination and redetermination of municipal boundaries and to provide for the delimiting of wards. The functions of municipal boundary determinations involve the alteration of municipal boundaries which will lucidly have an impact on municipal planning. This is further reinforced by the policy directive to include municipal capacity assessments in the Bill. This process may have an impact on the Provinces because the municipalities that make up a specific province will be affected.
- 5.8 Part A of Schedule 4 of the Constitution lists the functional areas of concurrent national and provincial legislative competence, with Part B of that Schedule indicating local government matters which may be legislated upon within the framework provided for in section 155(6)(a) and (7) of the Constitution. We are of the view that the purpose and effect of the Bill will in a substantial measure impact on regional planning and development which is listed in Part A of Schedule 4 to the Constitution and municipal planning which is listed in Part B of Schedule 4 to the Constitution. Schedule 4 to the Constitution provides for matters which are functional areas of concurrent national and provincial competence.
- 5.9 Therefore, The State Law Advisers are of the opinion that the Bill should be dealt with in accordance with the procedure set out in section 76 of the Constitution, as the provisions of the Bill in a substantial measure impact on municipal planning and regional planning and development which are listed in Schedule 4 A to the Constitution.

## **6. REFERRAL TO NATIONAL HOUSE OF TRADITIONAL AND KHOI-SAN LEADERS.**

- 6.1 With regard to the referral of the Bill to the National House of Traditional and Khoi-San Leaders by Parliament, section 39 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019) which commenced on 1 April 2021 provides as follows:

### ***“Referral of Bills to National House***

#### **39. (1) (a) Any Parliamentary Bill—**

- (i) *which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or*
- (ii) *pertaining to any matter referred to in section 154(2) of the Constitution,*  
*must, in the case of a Bill contemplated in subparagraph (i) and may, in the case of a Bill contemplated in subparagraph (ii), before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments.*

*(b) The National House must, within 60 days from the date of such referral, make any comments it wishes to make and submit such comments to the Secretary to Parliament: Provided that the National House may refer any such Bill to any provincial house for comment: Provided further that if the National House has no comments on any Bill referred to it, the National House must inform the Secretary to Parliament accordingly.*

*(2) A provincial legislature or a municipal council may adopt the same procedure referred to in subsection (1) in respect of the referral of a provincial Bill or a draft by-law to a provincial house or a local house, as the case may be.”.*

- 6.2 Section 39(1) of the Traditional and Khoi-San Leadership Act requires Bills pertaining to customary law or customs of traditional communities to be referred to the National House. Section 154(2) of the Constitution provides that “Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons and opportunity to make representations with regard to the draft legislation”. Furthermore, the National House will have 60 days to provide the Secretary to Parliament with its comments on Bills referred to it.
- 6.3 This Bill is considered to be national legislation that affects the status, institutions, powers and functions of local government and it specifically provides for Traditional and Khoi-San leaders to play a role in the selection of members of the Authority as provided for under clause 10 of the Bill and for the Traditional and Khoi-San leaders to be involved in the boundary determination process as provided for under clause 30. Furthermore, determinations and delimitations will impact on the Khoi-San communities if their villages or homesteads are affected by the boundary determinations. Therefore, our view is that the Bill must be referred to the National House.